

United States District Court
District of Utah

Markus B. Zimmer
Clerk of Court

Louise S. York
Chief Deputy

February 25, 2005

Mr. Patrick Fisher, Clerk
United States Court of Appeals
for the Tenth Circuit
1823 Stout Street
Denver, CO 80257

RE: RECORD ON APPEAL
Meza-Hernandez v. USA -- 04-4295
Lower Docket: 2:04-CV-797-DAK

Dear Mr. Fisher:

We hand you herewith, by FedEx mail, Volume I of the record on appeal in the above-referenced case.

Volume:	Contents:
I.	Consisting of documents 1-9.

Please acknowledge receipt of this record on appeal by signing the enclosed copy of this letter and returning it to my attention.

Sincerely,

Markus B. Zimmer, Clerk

By: /S
Aaron Paskins
Appeals Clerk

cc: Counsel of Record

FedEx Mail Receipt No.: 7914 8863 4648

ACKNOWLEDGMENT OF RECEIPT:

Received by: _____

Date: _____

9

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00797

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Felipe Meza-Hernandez
#10930-081
PO BOX 30010001-H 100
CALIFORNIA CITY, CA 93504

Mr. William L Nixon, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

United States District Court
District of Utah

Markus B. Zimmer
Clerk of Court

Louise S. York
Chief Deputy

February 25, 2005

Mr. Patrick Fisher, Clerk
United States Court of Appeals
for the Tenth Circuit
1823 Stout Street
Denver, CO 80257

RE: RECORD ON APPEAL
Tyler v. State of Utah -- 04-4308
Lower Docket: 2:04-CV-478-JTG

Dear Mr. Fisher:

We hand you herewith, by FedEx mail, Volume I of the record on appeal in the above-referenced case.

Volume:	Contents:
I.	Consisting of documents 1-14.

Please acknowledge receipt of this record on appeal by signing the enclosed copy of this letter and returning it to my attention.

Sincerely,

Markus B. Zimmer, Clerk

By: /S
Aaron Paskins
Appeals Clerk

cc: Counsel of Record

FedEx Mail Receipt No.: 7928 5609 1970

ACKNOWLEDGMENT OF RECEIPT:

Received by: _____

Date: _____

14

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00478

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Richard Tyler
USP LEAVENWORTH
#11177-081
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LEAVENWORTH, KS 66048-1000

Correction Section (FYI)
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
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FILED
CLERK, U.S. DISTRICT COURT
DISTRICT OF UTAH
DEPUTY CLERK

United States District Court

Central Division for the District of Utah

J. Charles Grosvenor

JUDGMENT IN A CIVIL CASE

V.

Qwest Corporation and The Qwest
Occupational Short Term Disability
Plan

Case Number: 2:03 cv 897 DS

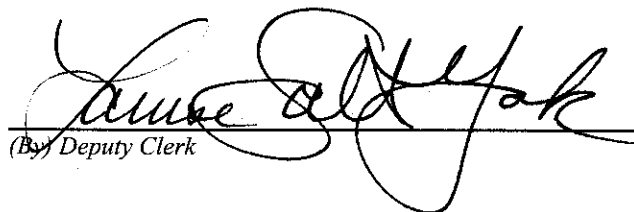
This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that judgment be entered in favor of the defendant and plaintiff's cause of action is dismissed on the merits.

February 24, 2005
Date

Markus B. Zimmer
Clerk


(By) Deputy Clerk 32

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00897

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

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SALT LAKE CITY, UT 84111
JFAX 9,3666061

J. Mark Baird, Esq.
BAIRD LAW FIRM LLC
2036 E 17TH AVE
DENVER, CO 80206

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

RECEIVED CLERK

FEB 22 2005

UNITED STATES OF AMERICA,

Plaintiff

v.

SCOT STOKES

defendant.

CASE NO. 2:05cr118

U.S. DISTRICT COURT

Appearing on behalf of:

SCOT STOKES,

Defendant

MOTION AND CONSENT OF DESIGNATED ASSOCIATE LOCAL COUNSEL

I, STEPHEN MCCOUGHEY, move the pro hac vice admission of petitioner to practice in this Court. I hereby agree to serve as designated local counsel for the subject case; to readily communicate with opposing counsel and the Court regarding the conduct of this case; and to accept papers when served and recognize my responsibility and full authority to act for and on behalf of the client in all case-related proceedings, including hearings, pretrial conferences, and trials, should Petitioner fail to respond to any Court order.

Date: 2/22, 2005

(Signature of Local Counsel)

2149
(Utah Bar Number)

APPLICATION FOR ADMISSION PRO HAC VICE

Petitioner, LUPE MARTINEZ, hereby requests permission to appear pro hac vice in the subject case. Petitioner states under penalty of perjury that he/she is a member in good standing of the bar of the highest court of California, the Ninth Circuit Court of Appeals and U.S. District Courts for the Central and Northern Districts of California, Bar No. 49620; is (i) X a non-resident of the State of Utah or, (ii) a new resident who has applied for admission to the Utah State Bar and will take the bar examination at the next scheduled date; and, under DUCivR 83-1.1(d), has associated local counsel in this case. Petitioner's address, office telephone, the courts to which admitted, and the respective dates of admission are provided as required.

Petitioner designates STEPHEN MCCOUGHEY as associate local counsel.

Date: FEBRUARY 16, 2005

Check here x if petitioner is lead counsel.

(Signature of Petitioner)

FEE PAID

Name of Petitioner: LUPE MARTINEZ

Office Telephone: (925) 783-6401
(Area Code and Main Office Number)

Business Address: 3564 Juergen Drive, San Jose California 94588

Law Offices of Lupe Martinez

Street

City

State

Zip

2

BAR ADMISSION HISTORY

COURTS TO WHICH ADMITTED	LOCATION	DATE OF ADMISSION
California Supreme Court	Sacramento, California	1971
U.S. Ninth Circuit Court of Appeals	San Francisco, California Los Angeles, California	1971
U.S. District Court, Central District of California	Los Angeles, California	1971
U.S. District Court, Northern District of California	San Francisco, California San Jose, California Oakland, California	1992

(If additional space is needed, attach separate sheet.)

PRIOR PRO HAC VICE ADMISSIONS IN THIS DISTRICT

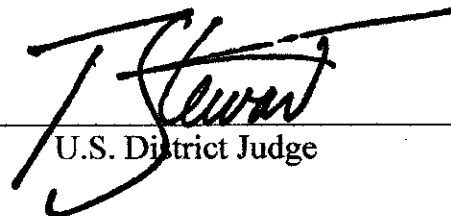
CASE TITLE	CASE NUMBER	DATE OF ADMISSION
NO PRIOR PRO HAC VICE ADMISSIONS		

(If additional space is needed, attach a separate sheet.)

ORDER OF ADMISSION

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for Petitioner's admission pro hac vice in the United States District Court, District of Utah in the subject case is GRANTED.

This 23rd day of February, 2005.



U.S. District Judge

jmr

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00118

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Albert L. Kleiner, Esq.
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United States Marshal Service
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US Probation
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FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 25 A 9:04

U.S. DISTRICT COURT
BY: _____

DEPUTY CLERK

RECEIVED CLERK

FEB 23 2005

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL MEDINA-MEJIA,

Defendant.

ORDER ENLARGING TIME TO FILE PRE-
TRIAL MOTIONS

Case No. 2:05-CR-00028 TS
(Judge Ted Stewart)

Based upon motion of the defendant and good cause shown,

IT IS HEREBY ORDERED that the motion cutoff date is extended to March 18, 2005.

DATED this 24th day of February 2005.

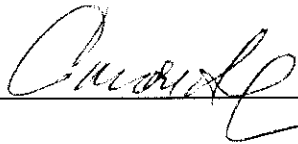


TED STEWART
United States District Court

77

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Order Extending Cutoff Date was mailed, postage prepaid, to Veda Travis, Assistant U.S. Attorney, 185 South State Street, #400, Salt Lake City, Utah 84111, on the 23 day of February 2005.



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Julie George
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Colleen K. Coebergh
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Salt Lake City, Utah 84111

Richard P. Mauro
43 East 400 South
Salt Lake City, Utah 84111

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00028

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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Mr Richard P Mauro, Esq.
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SALT LAKE CITY, UT 84111
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 24 P 5:19
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ROBERT WISNIEWSKI and EDDY
GAMEZ,
Defendants.

MEMORANDUM OPINION AND
ORDER

Case No. 2:03-CR- 00390 DB

Judge Dee Benson

INTRODUCTION

Before the Court is Defendants' motion to suppress evidence seized after a vehicle search at a traffic stop. Defendant Robert Wisniewski ("Wisniewski") argues that he was illegally detained when pulled over by a Utah Highway Patrolman, and that the illegal detention rendered his consent to search the vehicle invalid. Defendant Eddy Gamez ("Gamez"), as the registered owner of the vehicle Wisniewski was driving, has joined in the motion. The government contends that neither defendant has standing to assert any Fourth Amendment rights in this case; but if standing is found, the government argues the detention was justified by reasonable suspicion. In the alternative, the government asserts that the *Carroll* doctrine applies, and the search was justified, even without consent, based on probable cause. The Court heard testimony at several hearings,¹ received briefing from the parties, and heard final oral arguments on January 19, 2005. After reviewing all the factual material presented in light of the relevant law, the Court

¹ Evidentiary hearings were held in this motion on August 7, 2003, August 12, 2003, October 23, 2003, and July 20, 2004.

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DENIES Defendants' motion to suppress for the reasons set forth below.

BACKGROUND

I. The Traffic Stop

On May 22, 2003, Sergeant Paul Mangelson ("Sgt. Mangelson") of the Utah Highway Patrol was conversing with another trooper while monitoring traffic on Interstate 15 just south of Nephi, Utah. The two officers had parked their vehicles facing south in a crossover² and were using radar to detect the speed of vehicles headed in both directions. (Transcript of Hearing, August 7 and 12, 2003 ("Tr. I") at 12-13).

At approximately 9:30 a.m., Sgt. Mangelson observed a black pickup truck headed northbound. According to the reading on the radar detector, the truck was traveling at 63 miles per hour, well below the posted 75 mile per hour speed limit. (*Id.* at 13). As the truck passed him, Sgt. Mangelson noticed that the driver did not look toward the officers but rather was "glued to the steering wheel." (*Id.*). This observation, combined with the slow speed and the early morning hour, led Sgt. Mangelson to believe the driver may be impaired by fatigue or perhaps otherwise; he decided to follow the pickup truck to more closely observe the driver and his driving. (*Id.* at 14).

While Sgt. Mangelson followed, he watched as the vehicle crossed the lane divider on the

² Interstate 15 in this area has an unimproved median between northbound and southbound lanes. A crossover is a portion of the median that is leveled or improved to allow snowplows and emergency vehicles to cross over between the southbound lanes and the northbound lanes when necessary. (Tr. I at 42).

right-hand side of the Interstate several times.³ Sgt. Mangelson then moved his vehicle to the inside lane and pulled alongside the black pickup truck. He noticed the driver in the same position as he had observed before – glued to the steering wheel – and it appeared that the driver “was in a trance.” (*Id.*). Given his experience in patrolling Interstate 15, Sgt. Mangelson feared the driver may be overly tired, or perhaps even asleep, from driving all night and decided to pull him over to see if he was too fatigued or otherwise impaired to be safely operating a vehicle. (*Id.*).

After pulling over the vehicle, Sgt. Mangelson approached the black pickup truck on the passenger side and requested from Wisniewski, the sole occupant, his license and the vehicle’s registration. (*Id.* at 15-16). As he took the documents, Sgt. Mangelson noticed that Wisniewski’s hand was trembling. (*Id.* at 15). The Indiana driver’s license confirmed that the driver was Wisniewski, but the vehicle, also registered in Indiana, was not registered in Wisniewski’s name. (*Id.* at 15-16) When asked who owned the truck, Wisniewski replied that an individual named Eddy was the owner. Sgt. Mangelson did not remember what last name Wisniewski used, but he is certain it wasn’t Gamez. According to the vehicle’s registration, the owner of the vehicle was named Eddy Gamez. (*Id.* at 16-17).

Because Wisniewski was not the registered owner, Sgt. Mangelson asked him how he got the truck. Wisniewski responded that Eddy was a friend and had loaned him the truck. (*Id.* at 18-19). Sgt. Mangelson next asked Wisniewski where he had been. (*Id.* at 26). Wisniewski explained that he had been in Las Vegas looking for work. After further questioning,

³ The Defendants do not contest that it is against the law in Utah to cross over a lane divider. This is sometimes referred to as “weaving.” (Tr. I at 15).

Wisniewski claimed that he was experienced in the construction trade – buildings as opposed to roads – and was searching for construction work in Las Vegas. (*Id.* at 26, 28) Sgt. Mangelson felt Wisniewski's explanation was somewhat spurious, particularly because Wisniewski's hands were smooth, not rough and calloused as one would expect of a construction worker. (*Id.* at 28-29). Sgt. Mangelson also observed that Wisniewski was having trouble speaking because his mouth was so dry. To Sgt. Mangelson, Wisniewski appeared "scared to death"; he had to constantly lick his lips in order to speak. Sgt. Mangelson also testified that he could actually see Wisniewski's stomach "churning." (*Id.* at 25).

During this conversation with Wisniewski, Sgt. Mangelson also noticed several things about the cab of the pickup truck. First, he noticed a strong perfume odor that apparently was from an air freshener. (*Id.* at 21, 23). He also saw a cell phone, a road atlas, and a radar detector. (*Id.*). Finally, Sgt. Mangelson noticed that there was very little luggage and there were no visible construction tools in the cab of the truck, but he was unable to see if luggage or tools were in the truck bed because it was covered. (*Id.* at 21, 24, 75-76).

Given all of his observations – the strong perfume odor, the extreme nervousness of Wisniewski, the apparently inconsistent stories about his whereabouts, the presence of certain items and the lack of others, and the registration being in the name of a third party – and his extensive training as both a highway patrol trooper and drug interdiction specialist, Sgt. Mangelson suspected that Wisniewski was involved in transporting contraband. Following up on the initial reason for making the traffic stop, he asked Wisniewski to step out of the pickup truck to perform some field sobriety tests. (*Id.* at 31). Those tests indicated that Wisniewski "had a little bit of nystagmus," most likely from fatigue, but he did not appear to be intoxicated or

otherwise physically impaired. After the sobriety tests were performed, Sgt. Mangelson was satisfied that Wisniewski was physically able to operate a vehicle. (*Id.* at 31-32).

II. Detention and Consent to Search the Vehicle

At that point, Sgt. Mangelson escorted Wisniewski back to his patrol car. (*Id.* at 32). He performed a quick pat down search for weapons on Wisniewski and then sat him in the patrol car while Sgt. Mangelson verified some information, such as whether Wisniewski's driver's license was current and whether the vehicle had been reported stolen. (*Id.*). While in the patrol car, Wisniewski still appeared to be extremely nervous and never made eye contact with Sgt. Mangelson. He volunteered that he had been arrested for D.U.I. on five separate occasions, but otherwise said very little. (*Id.* at 32-33). Finally, the dispatcher reported to Sgt. Mangelson that Wisniewski had no criminal history (there was no record that he had ever been arrested on D.U.I. charges), that his driver's license was current, and that the vehicle had not been reported stolen. (*Id.* at 33).

At some point before the dispatcher's report, Sgt. Mangelson returned to Wisniewski his driver's license and the vehicle registration certificate. (*Id.*) When Wisniewski heard the dispatcher, he asked Sgt. Mangelson if he was free to go. Sgt. Mangelson said no. He explained that he believed Wisniewski was transporting drugs and wanted to search the pickup truck. (*Id.*) Wisniewski denied transporting drugs but said to "go ahead" and search the vehicle. In asking for consent to search, Sgt. Mangelson did not raise his voice, threaten Wisniewski, move closer to him, point a finger, or touch Wisniewski. Sgt. Mangelson was the only law enforcement officer present when this exchange took place. (*Id.* at 34-35).

After Wisniewski consented to a search of his vehicle, Sgt. Mangelson had him step out

of and stand away from the patrol car. As they exited the vehicle, Trooper Kelsey arrived. (*Id.* at 35). Sgt. Mangelson explained to Trooper Kelsey what had transpired and that he believed there were drugs in the pickup truck. The two officers began a search of the truck. (*Id.*) Wisniewski did not limit their search in any way. (*Id.* at 36). When they opened the tailgate, they saw a duffle bag and could see within the bag the outline of what appeared to be a brick shaped material. Further search uncovered four duffle bags and a suitcase that contained 134 bricks, weighing approximately one kilogram each, of cocaine. (*Id.* at 35-36).

III. Eddy Gamez

Wisniewski was arrested for transporting narcotics and taken to the Juab County correctional facility. (*Id.* at 36, 123). Sergeant John Ellis ("Sgt. Ellis") of the Utah Department of Public Safety was called to interview Wisniewski.⁴ (*Id.* at 123). According to his testimony, after Wisniewski waived his Miranda rights, Sgt. Ellis asked about the owner of the black pickup truck. Wisniewski stated that the owner was a friend of his whom he had known for a short while, and the two of them had exchanged vehicles. (*Id.* at 123-25). He stated further that he had made this same trip to Las Vegas several times before, each time to obtain approximately 130 kilograms of cocaine⁵, but on those other occasions he used his own vehicle. (*Id.* at 125; Transcript of Hearing, October 23, 2003, ("Tr. II.") at 174). When pressed, Wisniewski said that he did not know the owner's name, did not know him very well, and did not know anything about the owner. (Tr. I at 124-25).

⁴ Sgt. Ellis testified before the Court on August 12, 2003.

⁵ The purpose of these trips – to transport cocaine – was testified to by Agent Hicken after having reviewed Sgt. Ellis' report of the interview with Wisniewski.

In support of his effort to establish standing in this matter, Wisniewski testified before the Court on August 12, 2003, at the initial evidentiary hearing.⁶ Wisniewski stated that he had known Gamez for two to three years but was unable to correctly pronounce Gamez's name to Sgt. Mangelson because he did not speak Spanish very well. (*Id.* at 132). According to Wisniewski, the two met initially on a "construction site" where Wisniewski was helping his brother with a remodeling project in East Chicago, Indiana. (*Id.* at 132, 135-138). Prior to that time, Wisniewski had been employed as a truck driver and operated heavy equipment for construction companies.⁷ (*Id.* at 131). Wisniewski's brother had known Gamez and had initially introduced them. From there, the two developed somewhat of a social relationship, attending "cookouts" at Wisniewski's brother's home, going to motocross events together, and riding motorcycles together and with Wisniewski's family.⁸ (*Id.* at 133-34). Although Gamez lived in California, Wisniewski testified that Gamez came to Indiana approximately once a month or once every two months to visit his in-laws.⁹ (*Id.* at 142).

With respect to Gamez's pickup truck, Wisniewski testified that he asked Gamez if he could borrow his truck two or three days prior to his departure. This was the first time

⁶ The hearing held on August 12, 2003, was a continuation of the initial evidentiary hearing which began on August 7, 2003.

⁷ At the remodeling project where he initially met Gamez, Wisniewski was hired for painting and plumbing services rather than to drive dump trucks or heavy equipment. Wisniewski testified that Gamez also visited other job sites where Wisniewski was working after the two first became acquainted.

⁸ Wisniewski testified that he and Gamez had attended motocross events or rode motorcycles together in Indiana, Michigan and California.

⁹ Wisniewski stated that he had never met Gamez's in-laws, nor had he ever met Gamez's wife and children.

Wisniewski had ever asked to borrow Gamez's truck. (*Id.* at 134). Wisniewski stated that he didn't use his own truck for this trip because it did not get good gas mileage. (*Id.* at 143-44). He also stated that he was not aware Gamez's truck had three hidden compartments. (*Id.*) Knowing that he was planning a cross-country trip, Gamez allowed Wisniewski to take the truck and placed no limitations on his use of the truck. According to Wisniewski, this conversation took place at Wisniewski's home in Indiana. (*Id.* at 134). At the time of the first hearing, Wisniewski did not offer any evidence that Gamez knew about the drug smuggling operation. At that time, Gamez was not a defendant.

After the hearing on August 12, 2003, the government located Gamez in Monrovia, California using the registration and other documents found in the truck. (Tr. II at 169-70). On September 15, 2003, Craig Hicken ("Agent Hicken") of the Utah Department of Public Safety and Special Agent Terry Lacorse of the United States Drug Enforcement Agency traveled to California and contacted Gamez at his home.¹⁰ (*Id.* at 170). During an interview with Gamez, Gamez confirmed he became acquainted with Wisniewski approximately four years earlier and had a social relationship with him, attending motocross events together in both Indiana and California. (*Id.* at 180-82). Gamez also stated that he was not the owner of the black pickup truck but rather he had purchased it for a friend, named Socio, who lived in Indiana. According to Gamez, although the title was in his name, Socio had possession of the truck and the title. (*Id.* at 170-71). Gamez told Agent Hicken that when Wisniewski contacted him about borrowing the truck, he told Wisniewski that the truck did not belong to him, and that Wisniewski would have to contact Socio to arrange to use the vehicle. Gamez gave Wisniewski a telephone number for

¹⁰ Agent Hicken testified before the Court at an evidentiary hearing on October 23, 2003.

Socio and then claimed to have called Socio to vouch for Wisniewski, but he did not know whether Wisniewski later contacted Socio himself. (*Id.* at 171-72)

Gamez stated to Agent Hicken that if he had known Wisniewski was going to use the pickup truck to transport drugs, he never would have vouched for him. He also stated that he had not been in contact with Wisniewski since their initial discussion about borrowing the truck. (*Id.* at 172-73). Agent Hicken later contacted the Juab County Sheriff's impound lot where the pickup truck was being held and learned that there had been no inquiries into the vehicle by either Gamez or Socio. (*Id.* at 173-74)

At the hearing held on October 23, 2003, Wisniewski presented a recorded telephone conversation between Gamez and Wisniewski's counsel, which occurred the day prior to the hearing. (*Id.* at 202). In that recording, Gamez stated that he met Wisniewski and his wife about four years earlier in "Chicago," and that he had seen them two or three times annually since then. According to Gamez, he and Wisniewski had borrowed each other's vehicles on previous occasions. As to the black pickup truck, Gamez stated that he purchased the truck for a friend, Socio, in Chicago; the truck was stored at Socio's home, who also possessed the title and the keys, but Gamez could use it whenever he was visiting. Although he did not technically own the vehicle, Gamez stated that the vehicle was registered in his name, that he payed to insure the vehicle, and that he "basically" had authority to loan the vehicle to others. *See* Pla's Mem. Supp. Mot. Suppress ("Plaintiff's Memo") at Ex. 1, February 13, 2004).

During the telephone conversation, Gamez confirmed that he gave Wisniewski permission to use the black pickup truck to look for work – although he didn't know where Wisniewski was going to look for work – and that this was the first time Wisniewski had asked

to use "that vehicle." He stated that he had arranged for Wisniewski to call Socio and pick up the truck at an address in Whiting, the same address found on the registration certificate. (*Id.*)

After further investigation, the government found Gamez's fingerprints on the cocaine seized on May 22, 2003. Gamez was thereafter named in a superceding indictment, filed on December 30, 2003, as a co-defendant in this case. On February 10, 2004, Gamez declared in a written declaration that he was the registered owner of the pickup truck, that he paid for the truck, and that he pays for insurance and registration fees on the truck. (Plaintiff's Memo at Ex. 2). Gamez also stated in his declaration that Wisniewski had approached him in early May, 2003, to ask for permission to borrow the truck, to which Gamez agreed. (*Id.*) Wisniewski presented Gamez's written declaration to the Court in support of his claim that he has standing to contest the search of the vehicle. (Transcript of Hearing, July 20, 2004 ("Tr. III") at 5).

On July 20, 2004, Gamez appeared at an evidentiary hearing to give testimony and be cross-examined on his written declaration. (*Id.* at 10). On cross-examination, Gamez testified that he had purchased the black pickup truck from a dealership in East Chicago sometime in late 2002. The reason he gave for purchasing the truck in Indiana rather than California where he resided was that he was looking to begin a business in Indiana. (*Id.* at 12-13). Gamez further testified that he stored the truck in Whiting, Indiana, at the home of Socio, although he could not give Socio's full name or telephone number. (*Id.* at 14). When Wisniewski called him to borrow the truck, Gamez testified that he gave permission and instructed Wisniewski to go to Socio's home where Socio would deliver the keys. (*Id.* at 14, 17). He then called Socio and instructed him to give Wisniewski the keys to the truck. (*Id.* at 18). He also testified that he told Wisniewski no one else could use the truck or be in the truck. (*Id.* at 12).

Gamez also stated in testimony that, at the time Wisniewski called to ask to use the truck, he thought Wisniewski was using the truck to look for work; he did not know Wisniewski was going to use the truck for transporting drugs. (*Id.* at 19-20). However, later in the same hearing, Gamez stated just the opposite, testifying that the drugs Wisniewski was carrying belonged to Gamez, and that he had called Wisniewski while in transit and asked Wisniewski if he would pick up the drugs in California and transport them as a favor. (*Id.* at 20). He further testified that Wisniewski drove the truck to California where both of them loaded the cocaine into the truck. After the truck was loaded, Gamez told Wisniewski not to allow anyone in the vehicle for any reason. (*Id.* at 21, 23-24). Gamez also admitted that he had lied to Agent Hicken about the ownership of the truck and whether he or Socio gave permission to use the truck for the transportation of drugs, because he was "scared and just wanted to get away from any problems." (*Id.* at 24-25).

In the present motion, both Wisniewski and Gamez ask the Court to suppress the cocaine found in the truck because it was obtained pursuant to an unlawful search of the truck and seizure of the evidence.

FINDINGS OF FACT

Pursuant to Fed. R. Crim. P. 12(d), the Court makes the following findings of fact based on the background as set forth above:

1. On May 22, 2003, Sgt. Mangelson pulled over a black pickup truck, driven by Wisniewski, on I-15 based on his observation of the truck weaving in and out of the lane of travel, and his suspicion that the driver was intoxicated or otherwise impaired.

2. In conversation with Sgt. Mangelson, Wisniewski exhibited several signs of extreme nervousness: Wisniewski's hands were trembling, his mouth was so dry as to make it difficult to speak, and his stomach was visibly churning. Overall, Wisniewski appeared to be extremely frightened.

3. Wisniewski produced a valid Indiana driver's license.

4. Gamez was the registered owner of the black pickup truck, which was registered in Indiana.

5. Wisniewski received permission from Gamez to use the truck, and there were no meaningful limitations placed upon Wisniewski's use of the truck. When Wisniewski was pulled over, he was operating the truck within the scope of the permission he was given.

6. Upon questioning from Sgt. Mangelson, Wisniewski stated that he had been to Las Vegas to look for construction work.

7. There was a strong perfume odor emanating from the cab of the vehicle.

8. There was a cell phone, road atlas, and radar detector in the cab of the vehicle.

9. There was a conspicuous lack of luggage in the cab of the vehicle.

10. There was a conspicuous lack of construction tools in the cab of the vehicle.

11. Sgt. Mangelson could not ascertain the contents of the truck bed because it was covered.

12. Upon request from Sgt. Mangelson, Wisniewski exited his vehicle to perform some field sobriety tests.

13. The results of the sobriety tests indicated that Wisniewski, although perhaps fatigued, was not impaired to the point where he would be physically incapable of safely

operating a motor vehicle.

14. Sgt. Mangelson escorted Wisniewski to his patrol car and, before entering the patrol car, Sgt. Mangelson performed a brief pat down search of Wisniewski to check for weapons. After the pat down search, both individuals got in the patrol car.

15. The purpose of entering the patrol car was to allow Sgt. Mangelson to run a computer check of Wisniewski's license and the vehicle's registration.

16. While seated in the car, Wisniewski continued to show signs of extreme nervousness, never making eye contact with Sgt. Mangelson.

17. While waiting for dispatch to report, Sgt. Mangelson returned to Wisniewski his driver's license and the vehicle's registration certificate.

18. While waiting for the information, Wisniewski volunteered that he had been arrested five times on D.U.I. charges.

19. The dispatcher reported that Wisniewski's license was valid and current, that he had no criminal record, and that the vehicle registered to Gamez had not been reported stolen.

20. Upon hearing the information, Wisniewski asked if he was free to leave. Sgt. Mangelson said he was not free to leave.

21. Sgt. Mangelson told Wisniewski that he thought Wisniewski was transporting drugs. Wisniewski denied transporting drugs.

22. Sgt. Mangelson said he wanted to search Wisniewski's vehicle. Wisniewski said he could go ahead and search.

23. In asking to search the vehicle, Sgt. Mangelson did not raise his voice, threaten Wisniewski, move closer to him, point a finger at him, or touch him in any way.

24. Sgt. Mangelson was the only law enforcement officer present when his conversation with Wisniewski in the patrol car took place.

25. Sgt. Mangelson asked Wisniewski to exit the patrol car and stand off to the side of the patrol car.

26. As Sgt. Mangelson and Wisniewski exited the patrol car, Trooper Kelsey arrived.

27. Sgt. Mangelson informed Trooper Kelsey of all that had transpired, including that Wisniewski had given consent to search the vehicle.

28. The two officers searched the vehicle. Wisniewski did not ask them to stop or limit their search in any way.

29. In the truck bed, the two officers saw a duffle bag which had an outline of a brick shaped substance.

30. In searching further, the two officers found 134 bricks of cocaine, each weighing one kilogram, dispersed among four duffle bags and one suitcase in the truck bed.

31. Wisniewski was immediately arrested and later charged with drug trafficking.

32. Further analysis of the cocaine and its containers revealed Gamez's fingerprints.

33. Gamez was the owner of the cocaine or had sufficient control over the cocaine to constitute ownership.

34. Gamez was later charged as a co-defendant with Wisniewski in the same drug trafficking case.

CONCLUSIONS OF LAW

1. Wisniewski has standing to challenge the search of Gamez's vehicle because he was in lawful possession and control of the vehicle at the time of the search, having received permission to use the vehicle from Gamez.
2. Gamez has standing to challenge the search of his vehicle because he is the registered owner of the vehicle.
3. Gamez has standing to challenge the seizure of 134 kilograms of cocaine from his vehicle because he was the owner or sufficiently in control of the cocaine.
4. Sgt. Mangelson had reasonable suspicion that Wisniewski was involved in criminal activity sufficient to lawfully and reasonably continue Wisniewski's detention.
5. Sgt. Mangelson did not have probable cause to believe the black pickup truck contained contraband. Therefore, the automobile exception to the warrant requirement did not justify his warrantless search of the vehicle.

ANALYSIS

I. Standing

The Fourth Amendment guarantees to each citizen the right to be free from unreasonable searches and seizures by any governmental agency. U.S. CONST. amend. IV. This right is a personal right that cannot be vicariously asserted. *United States v. Allen*, 235 F.3d 482, 489 (10th Cir. 2000) (citing *Rakas v. Illinois*, 439 U.S. 128, 133-34 (1978); *United States v. Nicholson*, 144 F.3d 632, 636 (10th Cir. 1998)). The threshold question in any Fourth Amendment analysis is whether the claimant has standing under the circumstances to assert his own right. "The

proponent of a motion to suppress has the burden of adducing facts at the suppression hearing indicating that his own rights were violated by the challenged search.” *Allen*, 235 F.3d at 489 (citations and quotations omitted).

The “classic” test to determine whether a Fourth Amendment right exists is two-fold: “[1] whether the defendant manifested a subjective expectation of privacy in the area searched and [2] whether society is prepared to recognize that expectation as objectively reasonable.” *Id.* (quoting *United States v. Erwin*, 875 F.2d 268, 270 (10th Cir. 1989)).

A. Wisniewski’s Standing

Where the defendant is not the owner of the vehicle he is driving, he must show that he had “a legitimate possessory interest in or [a] lawful control over the car” before he may challenge a search of the vehicle. *United States v. Valdez Hocker*, 333 F.3d 1206, 1209 (10th Cir.) (quoting *Allen*, 235 F.3d at 489). Because the defendant’s expectation need only be reasonable, he need not provide legal documentation or other concrete evidence to establish the legitimacy of his possession. *Hocker*, 333 F.3d at 1209. However, something more than mere possession of the vehicle and its keys is required. *Id.* The defendant must show, at a minimum, “that he gained possession from the owner or someone with authority to grant possession.” *Id.* (quoting *United States v. Arango*, 912 F.2d 441, 445 (10th Cir. 1990)).

The Tenth Circuit has outlined three factors that, although not determinative, are important in guiding a district court when resolving issues of standing relative to vehicle searches: “(1) whether the defendant asserted ownership over the items seized from the vehicle; (2) whether the defendant testified to his expectation of privacy at the suppression hearing; and (3) whether the defendant presented any testimony at the suppression hearing that he had a

legitimate possessory interest in the vehicle.” *Hocker*, 333 F.3d at 1209 (quoting *Allen*, 235 F.3d at 489).

Although Wisniewski did not assert ownership over the cocaine seized from the pickup truck he was driving, he did testify regarding his possession of the vehicle. *See Hocker*, 333 F.3d at 1209. Wisniewski testified that he received permission from the owner, a friend of his, to use the black pickup truck to look for work. Because Wisniewski claimed that he personally obtained permission to use the pickup truck from the registered owner, he “plainly ha[d] a reasonable expectation of privacy in the vehicle and standing to challenge the search of the vehicle.” *Id.* (quoting *United States v. Rubio-Rivera*, 917 F.2d 1271, 1275 (10th Cir. 1990)).

The government would have the Court disregard both Wisniewski and Gamez’s testimony in their entirety due to inconsistencies throughout each and when compared to one another. “At a hearing on a motion to suppress, the district judge assesses the credibility of the witnesses and determines the weight to be given to the evidence.” *United States v. Taverna*, 348 F.3d 873, 877 (10th Cir. 2003) (citing *United States v. Caro*, 248 F.3d 1240, 1243 (10th Cir. 2001)). It is the prerogative of the Court, as the finder of fact, to believe all, part or none of the testimony presented by any witness at a suppression hearing. *See Hall v. United States*, 418 F.2d 1230, 1231 (10th Cir. 1969).

The Court acknowledges that the testimony of both Defendants contains inconsistencies and is unreliable in some instances. However, while other portions of Defendants’ testimony may be implausible, the Court is satisfied that Wisniewski has proven by a preponderance of the evidence that he received permission from Gamez to use his truck. Nowhere in the testimony of either Defendant is there any indication that permission was not granted, or that Wisniewski was

operating the truck beyond any limitations dictated by Gamez. Furthermore, the government offers no evidence to refute the fact that permission was granted. *See United States v. Garcia*, 897 F.2d 1413, 1418 (7th Cir. 1990) (defendant had standing in spite of car being reported stolen and being unable to recall owner's last name because government failed to prove by a preponderance of the evidence that the car was being used without permission of the owner). The Court believes the defendants on this point, despite the existence of other testimonial discrepancies and prevarications.

Wisniewski also presented evidence other than his own testimony at the suppression hearing supporting his legitimate possession of the vehicle, which fulfills the third factor outlined by the Tenth Circuit. Wisniewski presented Gamez's declaration to the Court in which Gamez stated that he had loaned the truck to Wisniewski. In a conversation with Wisniewski's attorney, Gamez again stated that he authorized Wisniewski to use his truck. Gamez later appeared in court to be cross-examined about his declaration and he again reiterated that Wisniewski was lawfully in possession of his truck. All of this supports what Wisniewski initially stated to Sgt. Mangelson: that he had permission from the owner to use the truck.

Viewing all of the evidence presented, the Court finds by a preponderance of the evidence that Wisniewski received permission from Gamez to borrow his truck, and Wisniewski was reasonable in believing that Gamez was the owner or otherwise had authority to allow him to use the truck. Having received permission from the proper authority, Wisniewski has standing to contest the search of the vehicle.

B. Gamez's Standing

It is well settled that an owner of a vehicle manifests a subjective expectation of privacy in his car and that society considers that expectation objectively reasonable. Therefore, an owner of a vehicle always has standing to contest the search of his vehicle. *See United States v. DeLuca*, 269 F.3d 1128, 1145 (10th Cir. 2001) ("owner has standing to directly challenge the illegal search of the vehicle"). The question in this case is whether Gamez was in fact the owner of the vehicle.

The government again urges the Court to disregard the entire body of testimony provided by Gamez in this case due to his lack of credibility and therefore argues that Gamez has provided no proof of ownership. Although, as the government correctly points out, Gamez himself gave conflicting testimony regarding the ownership of the truck, the Court need not rely solely on his testimony to determine ownership. The registration in Gamez's name is sufficient evidence to prove that the truck belonged to him. There is also unrefuted evidence that Gamez paid for the truck and continues to pay to insure it. It is true that Gamez originally denied actual ownership, claiming he was a strawman purchaser for an illegal alien who would have been unable to purchase the truck himself. However, that conflicting testimony does not erase his name from the registration document.

Gamez also testified that the cocaine found in the truck was his and he therefore has standing to contest its seizure. The government would again have the Court disregard Gamez's testimony on this subject, citing the improbable nature of his story regarding how he came to possess such a large and valuable amount of cocaine. However, the critical question as it relates to standing is not whether the background details as to actual ownership are true, but rather

whether Gamez had a possessory interest in the cocaine. The Court finds from the evidence that Gamez was the owner of the cocaine or at least had permission to possess it from its actual owner. He therefore has standing to contest the seizure of the cocaine.

Because the Court finds that Gamez has standing, he is entitled to argue the search violated his own personal rights. Gamez relies entirely on Wisniewski's arguments in this motion to suppress – i.e. if the officer's conduct violated Wisniewski's Fourth Amendment rights, it also violated those of Gamez. Therefore, the substantive analysis below that pertains to Wisniewski is also applicable to Gamez.

II. Reasonable Suspicion

Defendants next argue that Sgt. Mangelson did not have reasonable suspicion to further detain Wisniewski once his suspicions of impairment were dissipated. According to Defendants, Wisniewski's extended detention was not based on reasonable suspicion, and Sgt. Mangelson had no right to ask Wisniewski for consent to search the vehicle. Defendants do not challenge the voluntariness of the consent; their position is limited to the argument that Sgt. Mangelson had an insufficient basis to even ask for permission to search the vehicle.¹¹

¹¹ In briefing and at oral arguments, Defendants did not raise any challenge to voluntariness of Wisniewski's consent. They argue only that there was insufficient reasonable suspicion to continue Wisniewski's detention.

The following exchange occurred during oral arguments on the motion to suppress, held on January 19, 2005, between the Court and Wisniewski's counsel, Mr. Sisneros:

The Court: Well, let me see if I have your argument straight then. You assert and admit and concede that the Court needs to first agree with your argument that there was not a sufficient basis for holding Mr. Wisniewski any longer after the original traffic investigation was over?

Mr. Sisneros: That is accurate. The case that we rely on is the McSwain case.

Stopping a vehicle and detaining its occupants is a seizure and must be analyzed under the reasonableness inquiries of the Fourth Amendment. *United States v. Walker*, 933 F.2d 812, 815 (10th Cir. 1991). However, because a normal traffic stop is akin to an investigative

The Court: And if I disagree with you on that, then you have no argument that consent was involuntary?

Mr. Sisneros: I don't want to concede the argument. I think that that is certainly a much weaker argument than relying on the illegal detention.

The Court: I am just trying to understand if you are even making it, not the weakness or strength of it. Are you even arguing voluntary consent? If there was sufficient reasonable suspicion to continue to detain him for a little while longer to pursue the investigation, under those facts are you arguing that there was involuntary consent?

Mr. Sisneros: My appellate unit would probably chastise me for this, but I don't think so.

The Court: Okay.

Mr. Sisneros: I think if the Court should conclude that the officer was reasonable under these circumstances in detaining him further for whatever criminal activity which we don't really know, then while coercive it was not sufficiently coercive.

The Court: So under those circumstances the comment, you're not free to leave, becomes academic. It is irrelevant to the question of whether it was okay to go ahead and ask him if he could search the truck. You have him properly detained and he says, am I free to leave? Of course you have to say, no, you are not free to leave.

Mr. Sisneros: He [the officer] is just giving a truthful statement. It is not unfairly coercive, it is fairly coercive. The officer had concluded that he is a suspect in some criminal activity

Transcript of Hearing, January 19, 2005, at 41-42. See also *United States v. Doyle*, 129 F.3d 1372, 1377 n1 (10th Cir. 1997) ("Because we hold that [the officer's] detention of Mr. Doyle was lawful, we do not address his claim that his consent to search and the evidence subsequently obtained should be suppressed as the fruits of an unlawful detention."); *United States v. Mendez*, 118 F.3d 1426, 1432 (10th Cir. 1997) (defendant's contention that his consent was involuntary was entirely dependant on argument that he gave consent during illegal detention).

detention, it is analyzed under the principles pertaining to investigative detentions announced in *Terry v. Ohio*, 392 U.S. 1 (1968). See *United States v. Dewitt*, 946 F.2d 1497, 1501 (10th Cir. 1991).

Applying *Terry*, a traffic stop is reasonable under the Fourth Amendment if “the officer’s actions were justified at its inception, [and if the stop] was reasonably related in scope to the circumstances which justified the [stop] in the first place.” *Terry*, 392 U.S. at 20. Here, there is no question that Sgt. Mangelson was justified in initially stopping Wisniewski because he felt Wisniewski may be impaired and he had observed a traffic violation. The issue in this case concerns the second prong of the *Terry* analysis – that is, whether the scope of the stop was reasonably related to Wisniewski’s apparent impairment and observed traffic violation. “The investigative stop usually must ‘last no longer than is necessary to effectuate the purpose of the stop,’ and ‘[t]he scope of the detention must be carefully tailored to its underlying justification.’” *United States v. Hunnicutt*, 135 F.3d 1345, 1349 (10th Cir. 1998) (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983)).

An officer may detain someone longer than is reasonably related to the underlying justification of the stop in two situations: 1) when the officer “has an objectively reasonable and articulable suspicion illegal activity has occurred or is occurring,” and 2) when the “initial detention becomes a consensual encounter.” *Hunnicutt*, 135 F.3d at 1349; see also, *United States v. Villa-Chaparro*, 115 F.3d 797, 801 (10th Cir. 1997) (“An investigative detention may be expanded beyond its original purpose . . . if during the initial stop the detaining officer acquires reasonable suspicion of criminal activity” (quotations omitted)). The government asserts, as is its burden to do, see *United States v. Salzano*, 158 F.3d 1107, 1111 (10th Cir. 1998), that Sgt.

Mangelson observed several factors and made reasonable inferences from those observations which caused him to reasonably suspect Wisniewski was involved in criminal conduct. Armed with reasonable suspicion, the government contends Sgt. Mangelson lawfully detained Wisniewski beyond the scope of the original traffic stop.

Reasonable suspicion is determined by examining the alleged factors within "the totality of the circumstances." *United States v. Fernandez*, 18 F.3d 874, 878 (10th Cir. 1994). The Court should not try to "pigeonhole each purported fact as either consistent with innocent travel or manifestly suspicious." *Mendez*, 118 F.3d at 1431. Factors, which by themselves are consistent with innocent behavior, may support a finding a reasonable suspicion when taken together. See *United States v. Arvizu*, 534 U.S. 266, 277 (2001); *United States v. Solokow*, 490 U.S. 1, 9-10 (1989). On the other hand, "[a]lthough the nature of the totality of the circumstances makes it possible for individually innocuous factors to add up to reasonable suspicion, it is impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation." *Salzano*, 158 F.3d at 1114-15 (citations and quotations omitted).

In evaluating the factors which purportedly gave rise to reasonable suspicion, a court must be careful to "judge the officer's conduct in light of common sense and ordinary human experience . . . [but also] grant deference to a trained law enforcement officer's ability to distinguish between innocent and suspicious circumstances. *Mendez*, 118 F.3d at 1431 (citing *United States v. McRae*, 81 F.3d 1528, 1534 (10th Cir. 1996)).

Sgt. Mangelson's detention of Wisniewski can be viewed as occurring in three stages: 1) from the initial stop to the conclusion of the field sobriety tests, 2) from the conclusion of the

sobriety tests to the moment when dispatch reported its findings on Wisniewski and the vehicle, and 3) from the dispatcher's report to Wisniewski's consent. Defendants do not dispute that Sgt. Mangelson had a right to detain Wisniewski during Stage 1.¹² As Wisniewski passed the officer initially, he was "glued to the steering wheel" and, upon further investigation, appeared to be in a trance. Those observations combined with Wisniewski violating the law by weaving, and the time of day, reasonably led Sgt. Mangelson to suspect that Wisniewski was intoxicated or otherwise impaired. This reasonable suspicion justified Stage 1 of the detention. "An officer conducting a routine traffic stop may request a driver's license and vehicle registration, run a computer check, and issue a citation." *Taverna*, 348 F.3d at 877; *Fernandez*, 18 F.3d at 878.

Although Wisniewski mildly contends that he was illegally detained from the moment he passed the field sobriety tests through Stage 2, that is clearly not the case. First, Sgt. Mangelson had not yet run a computer check on Wisniewski's license and registration, nor decided whether to issue a citation for weaving. He was entitled to verify this information based upon the justification underlying the initial stop even if doing so took some time. *See, United States v. Jones*, 44 F.3d 860, 872 (10th Cir. 1995) (detention for 30 minutes was reasonable because the

¹² Wisniewski does question whether Sgt. Mangelson still could have reasonably suspected he was intoxicated or impaired after seeing how nervous and apparently alert he was when Sgt. Mangelson asked for his license and registration, relying on *United States v. McSwain*, 29 F.3d 558 (10th Cir. 1994). *McSwain* is inapplicable here because in that case, the reason for the stop – expired license plate on the vehicle – no longer existed when the officer approached the vehicle and saw the license plate was current. Here, there were two reasons for the initial stop: to verify whether Wisniewski was physically capable of driving and to potentially cite him for weaving. First, the Court does not believe that Sgt. Mangelson was satisfied nor should have been satisfied as to Wisniewski's impairment after speaking with him in the vehicle. But even if Sgt. Mangelson determined from his first words with Wisniewski that Wisniewski was not impaired, he still was allowed to verify Wisniewski's license and the car's registration, to cite him for weaving, and to ascertain whether there were reports that the vehicle was stolen.

officer was waiting the entire time for a response from dispatch regarding the status of the defendant's license).

Additionally, even if the purpose of the initial stop ceased once the sobriety tests were complete, Wisniewski was driving a car that was registered to someone else whose name he could not pronounce. Under those circumstances, Sgt. Mangelson could have reasonably suspected the vehicle was stolen and was entitled to pursue that suspicion. *See Villa-Chaparro*, 115 F.3d at 802 (where defendant was not the registered owner of the vehicle, did not stop promptly when signaled to do so, and possessed suspicious materials in the car, "the possibility existed that defendant had stolen the vehicle, was transporting narcotics, or both," and the officer was justified in running a check on the vehicle). The Stage 2 detention was therefore justified by reasonable suspicion.

Regarding Stage 3, Defendants contend Sgt. Mangelson did not have reasonable suspicion to continue to detain Wisniewski. The government contends otherwise, arguing that Sgt. Mangelson developed reasonable suspicion at some point before dispatch reported that Wisniewski had a valid and current license and that the vehicle had not been reported stolen.

The government points to several factors which it claims support Sgt. Mangelson's reasonable suspicion that Wisniewski was transporting contraband: 1) Wisniewski's extreme nervousness and its physical manifestations, 2) the vehicle was registered to an individual not present in the truck, 3) Wisniewski did not know, or could not pronounce the registered owner's last name, 4) the "very strong" perfume smell emanating from the cab, 5) the presence of a cell phone, road atlas, and radar detector in the cab, 6) the lack of luggage in the cab, 7) the apparent improbability and inconsistency of Wisniewski's explanation regarding his travel plans, 8) the

fact that Wisniewski was traveling on a known drug pipeline from a known source city, and 9) related to factor number 1, the fact that Wisniewski's nervousness did not subside once the detention was extended. The Court addresses these factors below and finds that Sgt. Mangelson's suspicion that Wisniewski was transporting drugs was objectively reasonable, thus supporting further detention.

A. Extreme Nervousness

Sgt. Mangelson stated that Wisniewski was extremely nervous when pulled over as evidenced by his trembling hands, his unusually dry mouth, his "scared to death" appearance, and his churning stomach. Moreover, Sgt. Mangelson noticed that once the field sobriety tests were complete and Wisniewski was seated in the patrol waiting for the dispatcher's report, he continued to exhibit nervousness by not making eye contact. The Court also notes that Wisniewski lied about being arrested five times on charges of D.U.I. during that period, which may have been an effect of the nervousness. Sgt. Mangelson testified that, unlike a routine traffic stop, Wisniewski's nervousness increased as the encounter continued.

Nervousness can be of limited significance and must be approached with caution in determining whether reasonable suspicion exists. *See United States v. Wald*, 216 F.3d 1222, 1227 (10th Cir. 2000); *United States v. Wood*, 106 F.3d 942, 948 (10th Cir. 1997), *Salzano*, 158 F.3d at 1113; *Fernandez*, 18 F.3d at 879. However, "extreme and continued nervousness . . . 'is entitled to somewhat more weight.'" *United States v. Williams*, 271 F.3d 1262, 1268-69 (10th Cir. 2001) (quoting *United States v. West*, 219 F.3d 1171, 1179 (10th Cir. 2000)).

This case presents circumstances analogous to those in *Williams* and *West*. In those cases, the Tenth Circuit upheld findings of reasonable suspicion that were supported by the

officer's observation of extreme and continued nervousness. Here, Wisniewski's hands were trembling – “shaking real bad” – he had difficulty speaking because his mouth was so dry, his stomach was visibly churning, and his facial expression betrayed that he was “scared to death.” While those initial observations may not be sufficient to support reasonable suspicion, the fact that Wisniewski's nervousness continued, even intensified, makes his nervousness more of a factor in the totality of the circumstances. Sgt. Mangelson testified, and the Court finds, that Wisniewski's nervousness exceeded that of an average citizen during a routine traffic stop both in intensity and duration.

The Court finds that Wisniewski's display resembles that of the defendants in *Williams* (trembling hands, shaky voice, and twitching lip that did not dissipate throughout the entire stop) and *West* (continued display of nervousness beyond what a normal citizen with nothing to hide would display). As such, the Court cannot “ignore [Wisniewski's] nervousness in reviewing the totality of the circumstances,” *Williams*, 271 F.3d at 1269, and “it is entitled to somewhat more weight because of [its] extreme and continued [nature].” *West*, 219 F.3d at 1179.

B. Third-Party Vehicle

A vehicle without the presence of its registered owner is termed a third-party vehicle by law enforcement officers. “One recurring factor supporting a finding of reasonable suspicion . . . is the inability of a defendant to provide proof that he is entitled to operate the vehicle he is driving.” *Villa-Chaparro*, 115 F.3d at 802 (quoting *United States v. Gonzalez-Lerma*, 14 F.3d 1479, 1484 (10th Cir. 1994)). “A defining characteristic of [the Tenth Circuit's] traffic stop jurisprudence is the defendant's lack of a valid registration, license, bill of sale, or some other indicia of proof to lawfully operate and possess the vehicle in question, thus giving rise to

objectively reasonable suspicion that the vehicle may be stolen.” *Fernandez* 18 F.3d at 879. The fact that the vehicle is not registered in the driver’s name, combined with other factors, engenders “the possibility . . . that a [d]efendant ha[s] stolen the vehicle, [is] transporting narcotics, or both.” *Villa-Chaparro*, 115 F.3d at 802; *see also Hunnicutt*, 135 F.3d at 1349 (“the inability to offer proof of ownership or authorization to operate the vehicle . . . figure[s] prominently” in a reasonable suspicion analysis).

The fact that Wisneiwski was not the registered owner of the black pickup truck clearly weighs heavily in favor of Sgt. Mangelson’s reasonable suspicion. As stated above, he clearly was reasonable in suspecting the car was stolen. That Wisneiwski could not properly pronounce the name on the registration strengthened the suspicion that the vehicle was stolen and only enhanced its reasonableness. Sgt. Mangelson also testified that, in his experience and training, it is common for drug couriers to employ third-party vehicles to transport their drugs. *See Williams*, 271 F.3d at 1270. When combined with other factors, his suspicion was reasonably enlarged to include the transport of contraband.

C. Odor from Air Freshener

“[T]he scent of air freshener is properly considered as a factor in the probable cause analysis.” *West*, 219 F.3d at 1178-79 (citing *United States v. Anderson*, 114 F.3d 1059, 1066 (10th Cir. 1997); *United States v. Leos-Quijada*, 107 F.3d 786, 795 (10th Cir. 1995); *United States v. Alvarez*, 68 F.3d 1242, 1246 (10th Cir. 1995) (McKay, concurring)). This is because air fresheners are often used by drug couriers to mask the distinctive odor of controlled substances. *West*, 219 F.3d at 1179. Even a “scent of air freshener,” when combined with other factors can support reasonable suspicion. *Anderson*, 114 F.3d at 1066.

Sgt. Mangelson testified that the perfume odor emanating from the pickup truck was obvious and "very strong." When viewed in light of his other suspicious observations about the vehicle, Sgt. Mangelson was reasonable in attributing more significance to the air freshener scent. *See also United States v. Sanchez-Valderuten*, 11 F.3d 985, 989 (10th Cir. 1993); *United States v. Stone*, 866 F.2d 359, 362 (10th Cir. 1989).

D. Travel Plans

"[C]ontradictory or implausible travel plans can contribute to a reasonable suspicion of illegal activity." *Mendez*, 118 F.3d at 1431 (citations omitted). Similarly, "inconsistencies in the information provided to the officer during the traffic stop may give rise to reasonable suspicion." *Wood*, 106 F.3d at 947.

Wisniewski claimed that he had traveled from Indiana to Las Vegas in search of construction work. Sgt. Mangelson found this explanation contradictory to what he observed about Wisniewski, specifically that his hands did not look like the hands of a construction worker. *See United States v. Turner*, 928 F.2d 956, 959 (10th Cir. 1991) (officer had reasonable suspicion where defendant claimed to be a mechanic but his hands were well-manicured and did not appear to be those of a mechanic).¹³ Although standing alone, this factor would likely not be sufficient to support a finding of reasonable suspicion, when viewed in the totality of the

¹³ The court in *Turner* seemed to rely more on the officer's observations due to the officer's previous experience as a mechanic. However, the Court does not feel that, for example, only officers with prior experience in construction work can be believed when it comes to examining and commenting on the appearance of an alleged construction worker. The overriding concept in determining reasonable suspicion is reasonableness "in light of common sense and ordinary human experience." The Court finds that it was reasonable for Sgt. Mangelson, whatever his prior experience, to expect a construction worker's hands to show some signs of his trade.

circumstances, the Court finds that it adds to the reasonableness of Sgt. Mangelson's suspicion.

Wisniewski would have the Court recognize the reasonable explanation for why his hands were not calloused and rough – that being that he drove trucks and operated mechanical equipment on construction sites rather than performing actual construction work with his hands – as rendering this factor innocent. However, reasonableness should be determined from the facts the officer knew, not the facts he could have discovered had he asked more pointed and searching questions. That being said, it would not be unreasonable to expect even the hands of a construction site truck driver to show some wear and tear, especially one who is devoted enough to his profession to drive half-way across the country in search of work.

E. Cell Phone, Road Atlas, and Radar Detector

In *Wald*, where the officer observed a road atlas in the vehicle, the Tenth Circuit held that “[t]he presence of open maps in the passenger compartment . . . is entirely consistent with innocent travel such that, in the absence of contradictory information, it cannot reasonably be said to give rise to suspicion of criminal activity.” 216 F.3d at 1227 (quoting *Wood*, 106 F.3d at 947). In today's world, the presence of cell phones and, to a lesser extent, radar detectors are likely as prevalent among travelers as road maps. Therefore, observation of these items, standing alone, should rarely support a finding of reasonable suspicion. *But see, United States v. Crillo-Casteneda*, 89 Fed.Appx. 173, 176 (10th Cir. 2004) (questionable persuasive value of pen cap without a pen, used napkins without surrounding fast food wrappers, and cell phone, although reasonable suspicion upheld when combined with strong mint odor and state of defendant's eyes). In this case, however, these observations were not standing alone; they were observed by a trained police officer in conjunction with a number of other suspicious factors. As such, the

presence of a cell phone, road atlas, and radar detector in Wisniewski's vehicle reasonably contributed to some degree to Sgt. Mangelson's reasonable suspicion.

F. Lack of Luggage

Reasonable suspicion is sometimes bolstered by the officer's observation that there is very little luggage in the automobile given the stated purpose of the trip. *See Jones*, 44 F.3d at 872 (lack of luggage for an alleged two week trip); *Arango*, 912 F.2d at 447 (inadequate amounts of luggage in truck for two week vacation); *United States v. Espinosa*, 782 F.2d 888, 891 (10th Cir. 1986) (very little luggage where defendant claimed to be on vacation). However, if the amount of luggage is reasonably consistent with the defendant's itinerary, that factor should not be suspicious. *See Wald*, 216 F.3d at 1227 (two pieces of luggage for two people on a purported weekend road trip to Las Vegas is not at all suspicious); *Mendez*, 118 F.3d at 1431 (lack of luggage meant little where vehicle had a trunk, "a location in which many, if not most, travelers store luggage.")¹⁴

Sgt. Mangelson admitted that, although there was no luggage in the passenger seat, he could not see into the truck bed where luggage may have been because it was covered. Consistent with *Mendez*, that fact should not have reasonably raised suspicions unless Wisniewski's travel plans would have dictated luggage should be in the cab. Wisniewski, who hailed from Indiana, claimed to be coming from Las Vegas where he had been looking for work. Although he never mentioned the length of time he stayed in Las Vegas, it would be reasonable to assume that the trip would have lasted several days. First, the drive from and back to Indiana

¹⁴ The *Mendez* court noted that it "might view a lack of luggage in a vehicle's passenger compartment much differently if the driver claimed to be making a lengthy trip and the vehicle did not have a trunk." 118 F.3d at 1431 n3.

would take a day or two each way, allowing time for meals and rest. Next, someone who is serious enough about his profession to spend a few days in transit to a destination where a potential job awaits is likely to spend several days at that destination examining all of the prospects.

After accounting for the duration of the trip, the lack of luggage in the passenger compartment of the pickup truck likely added little to Sgt. Mangelson's suspicion. The Court recognizes that the bed of a pickup truck certainly is sufficiently spacious to transport one individual's luggage for a trip lasting several days. It is also likely that most travelers who travel in pickup trucks prefer to transport their luggage in the truck bed. As was stated in *Mendez*, the lack of luggage in [that] case [was] "so innocuous and so susceptible to varying interpretations that [it carried] little or no weight" in the determination of reasonable suspicion. *Id.* Here again, however, even though the lack of apparent luggage is entitled to little weight, it is entitled to some weight.

G. Traveling on "Drug Pipeline" from known "Source City"

"Standing alone, a vehicle that hails from a purported known drug source area is, at best, a weak factor in finding suspicion for criminal activity," *Williams*, 271 F.3d at 1270, particularly if "the government offer[s] no evidence to support the assertion that vehicles coming from [the particular source area] are any more likely to contain drugs than those coming from [any other area]." *Salzano*, 158 F.3d at 1114. However, "answers to questions suggesting an individual is concealing the fact that he [was coming from] a known drug source area can 'give rise to suspicion.'" *Williams*, 271 F.3d at 1270 (quoting *Wood*, 106 F.3d at 947). *But see Jones*, 44 F.3d at 863, 872 (fact that defendants were traveling to and from cities both known for high drug

usage contributed to finding of reasonable suspicion even where defendants made no attempt to conceal this fact); *Espinosa*, 782 F.2d at 890-91 (same).

There is no evidence before the Court to suggest that Wisniewski attempted to conceal the fact that he was coming from Las Vegas, nor did he give inconsistent accounts of the destinations on his trip. Likewise, there was nothing about the vehicle, such as a license plate or registration form differing states, to suggest that he was being untruthful about where he was traveling to and from. Regardless of whether he was ultimately truthful or not in his account, “[s]o long as [Wisniewski] provides a consistent statement from whence he came, the mere fact that he comes from [a known source city] is not a reasonable basis to suspect that he is carrying drugs or other contraband.” *Salzano*, 158 F.3d at 1114.

Likewise, traveling on a “drug corridor” cannot reasonably support a suspicion that the traveler is carrying contraband. To so hold would give law enforcement officers reasonable suspicion that every vehicle on every major – and many minor – thoroughfares throughout this country was transporting drugs. The presence of these factors in this case are, at best, weak support to the other factors that establish reasonable suspicion.

H. Totality of the Circumstances

Judging these several factors under the totality of the circumstances, the Court concludes that Sgt. Mangelson had an objectively reasonable and articulable suspicion that Wisniewski was involved in criminal conduct. Under the circumstances, Sgt. Mangelson was justified in detaining Wisniewski through stage 3 of the detention, and was therefore justified in relying on his consent to search the vehicle.

III. Probable Cause and the *Carroll* Doctrine

Beyond reasonable suspicion, the government argues that the vehicle search was justified on probable cause pursuant to the automobile exception to the search warrant requirement, first recognized by the United States Supreme Court in *Carroll v. United States*, 267 U.S. 132 (1925). “Under the automobile exception, ‘police officers who have probable cause to believe there is contraband inside an automobile that has been stopped on the road may search it without obtaining a warrant.’” *United States v. Oliver*, 363 F.3d 1061, 1068 (10th Cir. 2004) (quoting *Florida v. Meyers*, 466 U.S. 380, 381 (1984) (per curiam)). Where probable cause exists, “the justification to conduct such a warrantless search does not vanish once the car has been immobilized,” *Oliver*, 363 F.3d at 1068 (quoting *Michigan v. Thomas*, 458 U.S. 259, 261 (1982) (per curiam)), even though “[t]he rationale for the automobile exception is based on both the inherent mobility of cars (as it is often impracticable to obtain a warrant before a car can be driven away) and the fact that there is a reduced expectation of privacy with motor vehicles.” *United States v. Mercado*, 307 F.3d 1226, 1228 (10th Cir. 2002).

“The Supreme Court has stated that ‘[a]rticulating precisely what ‘reasonable suspicion’ and ‘probable cause’ mean is not possible’ because ‘[t]hey are commonsense, nontechnical conceptions that deal with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.’” *Id.* at 1230 (quoting *Ornelas v. United States*, 517 U.S. 690, 695 (1996) (quotations omitted). “In determining whether probable cause exists, an officer may draw inferences based on his own experience.” *Id.* (quotations omitted).

Although the Court clearly finds that Sgt. Mangelson’s possessed reasonable suspicion that Wisniewski was involved in illegal activity, it does not find the existence of probable cause

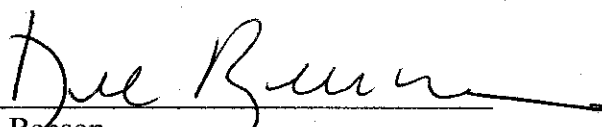
to search. Sgt. Mangelson did not smell drugs in the vehicle, nor did he see any drug paraphernalia about the cab of the truck. See *United States v. Vasquez-Castillo*, 258 F.3d 1207, 1213 (10th Cir. 2001) (“An officer’s detection of the smell of drugs . . . in a car is entitled to substantial weight in the probable cause analysis and can be an independently sufficient basis for probable cause.”) (quoting *West*, 219 F.3d at 1178); *United States v. Ozbirn*, 189 F.3d 1194, 1200 (10th Cir. 1999) (odor of raw marijuana, combined with nervous behavior and vague description of travel plans, satisfied probable cause standard); *United States v. Sparks*, 291 F.3d 683, 692 (10th Cir. 2002) (observation of plastic baggies “of the size and type used to distribute drugs” on the front seat of the vehicle, combined with other factors, was sufficient to establish probable cause). He did not notice anything about the vehicle, such as evidence of secret compartments, that would have raised his reasonable suspicion to probable cause. See *Mercado*, 307 F.3d at 1230-31 (citing *Anderson*, 114 F.3d at 1066 (evidence of a hidden compartment – in that case an altered ceiling of the vehicle – can contribute to probable cause to search. Additionally, unusual travel plans would be insufficient, standing alone, to establish probable cause; but when combined with other factors, unusual travel plans could contribute to probable cause)). Likewise, Sgt. Mangelson did not observe anything about Wisniewski, such as him fleeing from the scene, that would have elevated his reasonable suspicion to probable cause. See *Oliver*, 363 F.3d at 1068-69 (citing *United States v. Bell*, 892 F.2d 959, 967 (10th Cir. 1989) (suspicion that defendant was transporting drugs blossomed into probable cause when he fled from police detention)).

CONCLUSION

Based upon the findings of fact and the analysis above, the Court finds that both Wisniewski and Gamez have standing to contest the legality of the vehicle search. As owner of the cocaine, Gamez also has standing to challenge its seizure. Viewing the facts surrounding Wisniewski's detention in a totality of the circumstances, the Court finds that Sgt. Mangelson possessed an objectively reasonable and articulable suspicion that Wisniewski was involved in criminal activity. Because his suspicion was objectively reasonable, Sgt. Mangelson lawfully detained Wisniewski and received Wisniewski's voluntary consent to search the vehicle. Finally, the Court finds that the automobile exception did not support a warrantless search in this instance because there was not probable cause to support such a search.

IT IS SO ORDERED

Dated this 24th day of February, 2005


Dee Benson
United States District Judge

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00390

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
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Veda M. Travis, Esq.
US ATTORNEY'S OFFICE

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RECEIVED UTAH

IN THE UNITED STATES DISTRICT COURT
CENTRAL DIVISION, DISTRICT OF UTAH

TRENT SOWSONICUT, et al. : Case No. 2:03CV 676 DB
Plaintiffs, :
vs. : O R D E R
ROOSEVELT CITY, a Utah : Chief Judge Dee Benson
Municipal Corporation, et al. : Magistrate Judge Brooke C.
Defendants. Wells

THIS MATTER comes before the court on Plaintiffs' Motion to Compel Responses to Discovery Requests, Plaintiffs' Motion to Compel Disclosure of Personnel Records and Youth Detention Records, Defendants' Motion to Quash Third Party Subpoena Duces Tecum, Defendants' Motion to Strike Plaintiffs' Supplemental Initial Disclosures Re: Damages, and Defendants' Ex Parte Motion to Extend Deadline for Dispositive Motions. The court held a hearing on these motions December 21, 2004. Plaintiffs were represented by attorney Brett Painter and Defendants were represented by attorney Peter Stirba.

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Following the hearing, Plaintiffs' counsel, Brett Painter was asked to prepare a proposed order reflecting the court's rulings and have it approved by opposing counsel. Unfortunately, Mr. Painter was unaware of local rule 54-1 which requires that a proposed order be prepared and served upon opposing counsel for review and approval as to form within five days of the court's action. See DUCivR 54-1. Consequently, Defendants submitted a proposed order to the court and then Plaintiffs subsequently submitted a proposed order. It is somewhat disappointing to the court that the parties in this case cannot seem to agree on the court's oral rulings. Thus necessitating the expenditure of further limited judicial resources on matters that were previously handled. Nevertheless, now before the court are two proposed orders whose deadlines are somewhat outdated. All deadlines originally ordered as January 20, 2005 are hereby changed so that the items ordered herein shall be provided within 10 days of the entry of this order unless another time frame is provided.

The court having considered these proposed orders, its prior oral rulings, the motions that were filed subsequent to the court's hearing held in December, and now being fully informed enters the following order:

1. The court GRANTS in part and DENIES in part Plaintiffs'

Motions to compel (see docket no. 39 & 48) as follows:

(a). ORDERS Defendants to prepare and produce to Plaintiffs within 10 days from the entry of this order a detailed affidavit describing the nature and circumstances of the creation, storage, and disposal of any and all photographs taken by Defendants, or any of their agents or representatives, of Plaintiff Trent Sowsonicut. This affidavit shall also describe what efforts were undertaken to retrieve the photographs.

(b). ORDERS Defendants to review all radio logs, dispatch tapes, activity reports, duty logs, or notebooks from August 2, 2002 to August 4, 2002 and to produce to Plaintiffs within 10 days from the entry of this order all such documents relating to any of the Plaintiffs. However, if no documents are found related to this request concerning the Plaintiffs, then Chief Hooley shall so state in an Affidavit.

(c). ORDERS Defendants to produce annual performance reviews, documentation of training and education, and documents relating to any imposed discipline with respect to Chief Steve Hooley, Officer Lance Williamson and Officer Henry McKenna. These documents shall be treated as confidential and can only be used for this litigation and will be subject to a court order.

2. Based on the foregoing, Defendants' Motion to Quash (see docket no. 45) is rendered MOOT however,

(a). If Lowther & Associates has in its possession the photographs taken by Officer Nelson it will produce these photographs to Plaintiffs within 30 days from the entry of this order; and

(b). Within 30 days from the entry of this order, Lowther & Associates will produce to Plaintiffs an index of the contents of its file relating to this case.

3. Defendants' Motion to Strike is taken under ADVISEMENT, with the following exception:

(a). Plaintiffs shall supplement their Answer to Interrogatory No. 9 of Defendants' First Set of Interrogatories within 10 days from the entry of this order.

4. Defendants' Ex Parte Motion to Extend Deadline for Dispositive Motions is hereby GRANTED. The deadline to file all dispositive motions is now April 8, 2005. As a result of this change the court must further modify the scheduling order as follows:

OTHER DEADLINES

a. Discovery to be completed by:

Fact discovery	<u>3/28/05</u>
Expert discovery	<u>3/28/05</u>

- b. (optional) Final date for supplementation
of disclosures and discovery under Rule 26

(e)

- c. Deadline for filing dispositive or 4/8/05
potentially dispositive motions

TRIAL AND PREPARATION FOR TRIAL:

- a. Rule 26(a)(3) Pretrial

Disclosures

Plaintiffs 7/13/05

Defendants 7/27/05

- b. Objections to Rule 26(a)(3)

Disclosures (if different
than 14 days provided in Rule)

DATE

- c. Special Attorney Conference on 8/10/05
or before

- d. Settlement Conference on or 8/10/05
before

- f. Final Pretrial Conference 2:30 p.m. 8/24/05

- g. Trial Length Time Date

- i. Bench Trial 10 days 8:30 a.m. 9/12/05

- ii. Jury Trial Yes Twelve

Jurors

5. The court FINDS that records held by Utah's Department of Human Services, Division of Juvenile Justice Services, specifically records relating to juveniles detained or processed through the youth receiving center in Roosevelt, Utah from August 2-4, 2002, meet the following requirements of Utah Code Ann. § 63-2-202(7): (a) the records deal with a matter in controversy over which this court has jurisdiction; (b) the court has considered the merits of the request for access to the records; and (c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the records in order to protect privacy interests in the case of private or controlled records; (d) to the extent the records are properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access. Accordingly, the court ORDERS the Department of Human Services, Division of Juvenile Justice Services, to produce the following categories of documents:

(a). All documents in the possession or control of the Division of Juvenile Justice Services relating to Trent Sowsonicut, Angelo Checora, Jr., Angelyn Caren, Wendellena Navanick, Dayzsha Sowsonicut, Cheryl Gardner, and Samantha Ankerpont, i.e. those individuals related to the instant action.

(b). A statistical summary of all juveniles arrested,

detained, or processed through the Roosevelt youth receiving center from August 2, 2002 to August 4, 2002. This summary is not to include names of individuals or any potential contact information on account of privacy concerns. However, this statistical summary is to include other information such as race, national origin, age, sex, and the number of juveniles arrested, detained or processed from August 2, 2002 to August 4, 2002.

(c) . These documents, statistical summaries, and any information from the Division of Juvenile Justice Services, are to be used for purposes of this litigation only and are to be destroyed following the resolution of the instant action.

6. Defendants have also filed a motion to amend/correct the error contained in the amended scheduling order. See Docket no. 69. Defendants' seek to amend the scheduling order issued by this court on December 22, 2004. Specifically, Defendants argue "that paragraphs 4 and 5 of this Order are in error because they suggest that the deadline for all fact and expert discovery was extended to January 31, 2005." Def.'s Mtn. to Amend p. 1, docket no. 69. Allegedly, the reason for the court extending the discovery cutoff was for Plaintiffs to supplement their answers to Defendants' Interrogatory Number 9. See id.

In contrast, while Plaintiffs do not object to "clarifying the scope of the discovery to be completed . . . they [do] object

to the correction sought by Defendants as incomplete." Pla.s' Opp. Memo p. 2. Plaintiffs note that in addition to supplementing Interrogatory Number 9, the court also required the production of other discovery including *inter alia*, performance reviews, records, and affidavits. Plaintiffs also argue that they can pursue documents from third parties during the extended discovery period based on the court order.

After reviewing both parties memoranda the court orders the following:

(a). As the parties agree, the court did not provide for unlimited fact or expert discovery by moving the discovery deadline. All documents and supplemental information ordered by the court is to be provided before the deadline. If necessary Plaintiffs may use discovery tools to obtain records from third-parties. However, once again the court notes that this extension is not intended to reopen unlimited fact or expert discovery.

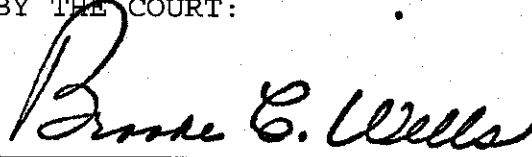
(b). The agreement between the parties concerning supplementing expert reports is not before the court. However, in the interest of judicial efficiency the court, DENIES Plaintiffs' request for "an additional two weeks to provide a supplement to their expert witness's report, if necessary." Pla.s' Mem. in Opp. p. 3. The parties have an agreement concerning the supplementation of expert reports and in the court's view both sides should abide by the terms and conditions

of this agreement.

Based on the foregoing, all outstanding motions are resolved save for the Defendants' motion to strike Plaintiffs' supplemental disclosure concerning damages.

DATED this 23 day of February, 2005.

BY THE COURT:

A handwritten signature in cursive script, reading "Brooke C. Wells". The signature is written in dark ink and is positioned above a horizontal line.

BROOKE C. WELLS
United States Magistrate Judge

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00676

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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(801) 746-5613 FAX
Attorney for Defendant

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U.S. DISTRICT COURT
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UNITED STATES DISTRICT COURT
CENTRAL DIVISION, DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEVI ALLEN LIESKE,

Defendant.

ORDER CONTINUING DATE IN WHICH
TO FILE PRETRIAL MOTIONS

Case No. 1:05-CR-003-DB

BASED UPON the Defendant's motion, good cause having been shown, the Court now enters the following ORDER:

1. Any appropriate pretrial motions shall be filed by MARCH 18, 2005.

DATED this 24th day of February, 2005.

BY THE COURT:


Dee V. Benson
Chief U.S. District Court Judge

14

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:05-cr-00003

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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DISTRICT OF UTAH

/
EMAIL

US Probation
DISTRICT OF UTAH

/
EMAIL

United States District Court
District of Utah

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JAN 24 P 1:14
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UNITED STATES OF AMERICA

vs.

John D. Baker

AMENDED JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: **1:03-cr-00128-001 DB**

Plaintiff Attorney: **Vernon Stejskal**

Defendant Attorney: **Vanessa Ramos-Smith**

Atty: CJA ___ Ret ___ FPD **X**

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's USM No.: **110004-081**

Defendant's Residence Address: _____

Country _____

02/10/2005

Date of Imposition of Sentence

Defendant's Mailing Address: _____

SAME

SAME

Country _____

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☐ was found guilty on count(s)

COP **11/23/2004** Verdict _____

I-Superceding Indictment

Title & Section
21USC§841(a)(1)

Nature of Offense
Accessory After the Fact to Manufacture
Methamphetamine

Count
Number(s)
Is

Entered on docket
2/25/05 by:
KVS
Deputy Clerk

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) **I-Indictment** _____ (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **15 months.**

Upon release from confinement, the defendant shall be placed on supervised release for a term of **3 years.**

☐ The defendant is placed on Probation for a period of _____
The defendant shall not illegally possess a controlled substance.

67

Defendant: John D. Baker
Case Number: 1:03-cr-00128-001 DB

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant shall submit to drug/alcohol testing as directed by the probation office and pay a one-time \$115.00 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the probation office.

2. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:
No Fine Imposed

☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**

- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:
-

Defendant: John D. Baker
Case Number: 1:03-cr-00128-001 DB

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
Envirosolve, LLC 2120 Southwest Boulevard Tulsa, OK., 74107 DEA cases #ML 03-0501; ML 03-5057 Job Date 05/02/03 Location: Utah RE Invoice Nos: 13030501D and 13030501L	3,271.20	3,271.20
Totals:	\$ 3,271.20	\$ 3,271.20

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☒ Restitution is payable as follows:

☒ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☒ other:

This amount is joint and several and has also been ordered in Second District Court, Ogden, Utah in case nos. 031902185-Douglas Lamar Hurst; #031902187-Gretchen Elaine Spell and #031902188-James Stanley Spell.

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

Defendant: John D. Baker
Case Number: 1:03-cr-00128-001 DB

RECOMMENDATION

- ☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

The Court recommends a Federal Correctional Institution at Nellis, NV., The Court also recommends a drug re-hab program

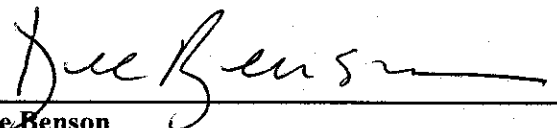
CUSTODY/SURRENDER

- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.

- ☒ The defendant shall report to the institution designated by the Bureau of Prisons by 1:00 p.m. Institution's local time, on Wednesday, March 9, 2005.

DATE:

Feb. 24, 2005



Dee Benson
United States District Judge

Defendant: John D. Baker
Case Number: 1:03-cr-00128-001 DB

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:03-cr-00128

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Colleen K. Coebergh, Esq.
29 S STATE ST #007
SALT LAKE CITY, UT 84111
EMAIL

Vanessa M. Ramos-Smith, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

SHARON PRESTON (7960)
Attorney for Defendant
716 East 4500 South, Suite N142
Salt Lake City, UT 84107
Telephone (801) 269-9541

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 24 P 1:14
U.S. DISTRICT COURT OF UTAH
BY: RECEIVED CLERK
DEPUTY CLERK
FEB 19 2005
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN ARMSTRONG,

Defendant.

)
)
) ORDER
)
)
)
)
)
)
)
)
)

Case No. 2:03-CR-680

Judge Dee Benson

Based on Defendant's motion and consent of the government, the sentencing in this matter is continued and the trial will commence on the 25 day of April, 2005, at 2:30 a.m./p.m.

IT IS ORDERED this 22 day of February, 2005.

BY THE COURT:

Dee Benson

JUDGE DEE BENSON

108

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00680

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Stephanie Ames, Esq.
3635 BIRCH AVE
OGDEN, UT 84403
EMAIL

US Probation
DISTRICT OF UTAH
/
EMAIL

United States Marshal Service
DISTRICT OF UTAH
/
EMAIL

Mark J. Gregersen, Esq.
3855 S 500 W STE M
SALT LAKE CITY, UT 84115
EMAIL

Mr. Stephen R McCaughey, Esq.
10 W BROADWAY STE 650
SALT LAKE CITY, UT 84101
EMAIL

Sharon L. Preston, Esq.
716 E 4500 S STE N142
SALT LAKE CITY, UT 84107
EMAIL

Kevin L. Sundwall, Esq.
US ATTORNEY'S OFFICE
/
EMAIL

FILED

CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

2005 FEB 24 P 2:16

DISTRICT OF UTAH, CENTRAL DIVISION

DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Case No. 2:04-CR-295JTG

Plaintiff,

v.

ORDER CONTINUING SENTENCINGS

JENNIFER T. MARTIN,

Defendant.

Judge J. Thomas Greene

The Court, having considered the United States' Motion to Continue Sentencings, and good cause appearing,

IT IS ORDERED that:

1. The sentencing for defendant Tracey Martin is continued from February 23, 2005 to the 2nd day of March, 2005, beginning at 10:30 AM
2. The sentencing for defendant Jennifer Martin is continued from February 28, 2005 to the 9th day of March, 2005, beginning at 11:00 AM

DATED this 24th day of February, 2005.

BY THE COURT:

J. Thomas Greene
The Honorable J. Thomas Greene
United States District Court Judge

44

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00295

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Mark Y. Hirata, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Scott C. Williams, Esq.
43 E 400 S
SALT LAKE CITY, UT 84111
EMAIL

Wendy M. Lewis, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 24 PM 2:16

In the United States District Court
for the District of Utah, Central Division

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JEFFREY SCOTT SMITH,

Defendant.

MEMORANDUM AND ORDER

Case No. 2:04cr596 JTG

An evidentiary hearing was held on February 23, 2005, in the above entitled case. The government was represented by J. Drew Yeates and the defendant by Richard P. Mauro. The parties presented evidence on Defendant's Motion to Suppress Custodial Statements and Evidence from Search. The court admitted into evidence government exhibits 1 and 2, and defendant's exhibit A. At the conclusion of evidence both parties rested and requested that post-hearing memoranda and oral argument be set by the Court. The following schedule was established:

Defendant's Memorandum to be filed by March 23, 2005.

Plaintiff's Response Memorandum to be filed by April, 6, 2005.

Oral argument will be heard on April 13, 2005 at 10:00am.

IT IS SO ORDERED.

DATED this 24th day of February 2004.


J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

116

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00596

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Jonathan D. Yeates, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. Douglas T Hall, Esq.
7321 S STATE STE A
MIDVALE, UT 84047
EMAIL

Mr Richard P Mauro, Esq.
43 E 400 S
SALT LAKE CITY, UT 84111
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

United States District Court District of Utah

FILED
CLERK U.S. DISTRICT COURT
105 FEB 24 P 2 1b
DEPUTY CLERK

UNITED STATES OF AMERICA

vs.

Mark Richard Patrick

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: 2:04-CR-00450-001 JTG

Plaintiff Attorney: Karin M. Fojtik

Defendant Attorney: Steven R. McCaughey

Atty: CJA * Ret FPD

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's USM No.: 11666-081

Defendant's Residence Address: _____

Country USA

2/22/2005

Date of Imposition of Sentence

Defendant's Mailing Address:

Same

Country USA

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☐ was found guilty on count(s)

COP 9/28/2004 Verdict

1 of the Indictment

Title & Section
18 USC § 2422(b)

Nature of Offense
Coercion and Enticement for Illegal Sexual Activity

Count Number(s)
1

Entered on docket
2/25/05 by: KVS
Deputy Clerk

☐ The defendant has been found not guilty on count(s)

☐ Count(s) (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **60 months**

Upon release from confinement, the defendant shall be placed on supervised release for a term of **60 months**

☐ The defendant is placed on Probation for a period of _____
The defendant shall not illegally possess a controlled substance.

26

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. Defendant shall maintain full-time verifiable employment or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the U.S. Probation Office.
2. Defendant shall submit to drug/alcohol testing, as directed by the U.S. Probation Office, and pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan, as directed by the U.S. Probation Office and shall not possess or consume alcohol during the course of treatment.
3. Defendant shall not possess or use a computer with access to any 'on-line computer service' without the prior written approval of the Court.
4. Defendant shall register with the state sex offender registration agency in any state where the defendant resides, is employed, carries on a vocation, or is a student, as directed by the U.S. Probation Office. The Court orders that the presentence report may be released to the state agency for purposes of sex offender registration.
5. Defendant shall participate in a mental health and/or sex offender-treatment program as directed by the U.S. Probation Office.
6. Defendant is restricted from visitation with individuals who are under 18 years of age, without adult supervision, as approved by the U.S. Probation Office.
7. Defendant shall not view or otherwise access pornography in any format.
8. Defendant shall submit to the collection of a DNA sample at the direction of the Bureau of Prisons or U.S. Probation Office.
9. Defendant shall report the address where he will reside and any subsequent change of residence to the U.S. Probation Officer responsible for supervision, and shall register as a sex offender in any state where he resides, is employed, carries on a vocation, or is a student.
10. Defendant shall not use or possess any controlled substances.

CRIMINAL MONETARY PENALTIES

W

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.

☒ other:

No Fine Imposed

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ _____ \$ _____

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

- ☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ other:

- ☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

Defendant: Mark Richard Patrick
Case Number: 2:04-CR-00450-001 JTG

Page 4 of 5

WC

☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

DEPARTURE

The Court does not grant the Motion for Departure pursuant to 18 U.S.C. 3553(c)(2), the Court enters its reasons for departure:

NOT APPLICABLE

RECOMMENDATION

☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

FCI Butner, N.C. or FCI Devens, Mass.; if not accepted to intensive sex offender program, then Crt recommends FCI in Colorado or Arizona

CUSTODY/SURRENDER

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.

☒ The defendant shall report to the institution designated by the Bureau of Prisons by 12:00 noon Institution's local time, on 3/22/2005
(facility time)

DATE: February 24th, 2005

J. Thomas Greene
J. Thomas Greene

United States District Judge

Defendant: Mark Richard Patrick
Case Number: 2:04-CR-00450-001 JTG

Page 5 of 5 /

1/14

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00450

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Karin Fojtik, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Mr. Stephen R McCaughey, Esq.
10 W BROADWAY STE 650
SALT LAKE CITY, UT 84101
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

United States Probation Office
for the District of Utah

Report on Offender Under Supervision

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 24 A 9:42

Docket Number: 2:03-CR-00608-001-DB

Name of Offender: Diane Bennett

Name of Sentencing Judicial Officer: Honorable Dee V. Benson

Chief United States District Judge

Date of Original Sentence: January 6, 2004

Original Offense: Access Device Fraud

Original Sentence: 5 Months BOP Custody/36 Months Supervised Release

Type of Supervision: Supervised Release Supervision Began: July 2, 2004

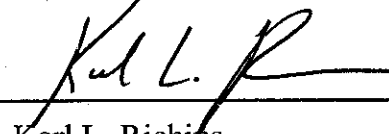
SUPERVISION SUMMARY

This supervision summary report is to advise the Court of drug abuse acknowledged by the defendant. The defendant provides urine samples at the probation office for testing, wherein they have all tested negative for illegal drug use. However, the defendant acknowledged to her probation officer that she was abusing Soma and Ultram. Soma is a muscle relaxant that would not show up on a drug screen and Ultram is a pain reliever that is not opiate based. The probation office has contacted the defendant's drug aftercare treatment provider and advised them of this information. The defendant will be aggressively participating in treatment for abusing these two prescription medications.

The probation office respectfully recommends that no action be taken by the Court at this time. We will keep the Court apprised of any further violations regarding this matter.

If the Court desires more information or another course of action, please contact me at (801) 975-3400, extension 5275.

I declare under penalty of perjury that the foregoing is true and correct



Karl L. Richins

U.S. Probation Officer

Date: February 17, 2005

THE COURT:

- ☒ Approves the request noted above
☐ Denies the request noted above
☐ Other



Honorable Dee V. Benson

Chief United States District Judge

Date: _____

19

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00608

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

Jamie Zenger, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

Lynda Rolston Krause, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH CENTRAL DIVISION

FILED

CLERK, U.S. DISTRICT COURT

February 25, 2005 (11:10am)

DISTRICT OF UTAH

DOMINION NUTRITION, INC.,

Plaintiff(s),

vs.

RAYMOND CESCA,

Defendant(s).

**ORDER FOR EXPEDITED
TREATMENT OF MOTION**

Case No:2:05 CV 143 TS
(Related case ND Ill 04-C-4902)

District Judge Ted Stewart

Magistrate Judge David Nuffer

Plaintiff has filed a motion to compel compliance with a subpoena¹ and has requested accelerated hearing and briefing on the motion.²

IT IS HEREBY ORDERED that the motion for accelerated briefing is GRANTED.

IT IS FURTHER ORDERED that any response to the motion to compel shall be filed and served by fax or courier delivery on or before 4:00 p.m. February 28, 2005. A courtesy copy shall be provided to chambers of the magistrate judge by courier or via e-mail to utmj_nuffer@utd.uscourts.gov. Hearing shall be held Tuesday March 1, 2005, at 1:30 p.m., Room 477, U.S. Courthouse, 350 South Main Street, Salt Lake City, Utah. Any party desiring to participate by telephone shall contact Plaintiff's counsel on or before 4:00 p.m. February 28,

¹ Docket no. 1, filed February 18, 2005.


² Docket no. 2, filed February 18, 2005.

5

2005, to make those arrangements. Plaintiff's counsel shall, with all participants on the line, call the court at 801 524 6150 at the time set for hearing.

February 25, 2005.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer
U.S. Magistrate Judge

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cv-00143

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Lawrence D. Graham, Esq.
BLACK LOWE & GRAHAM
701 FIFTH AVE STE 4800
SEATTLE, WA 98104

Lorin David Griffin, Esq.
WORKMAN NYDEGGER
1000 EAGLE GATE TOWER
60 E S TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

Joseph Kent Mathewson, Esq.
DONOHUE BROWN MATHEWSON & SMYTH
140 S DEARBORN ST STE 700
CHICAGO, IL 60603

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FILED
CLERK, U.S. DISTRICT COURT
FEB 25 4 10 21
BY: [Signature]
DEPUTY CLERK

RECEIVED CLERK

FEB 24 2005

U.S. DISTRICT COURT

UNITED STATES OF AMERICA, : 1:04 CR 105 JTG
Plaintiff, :
vs. : ORDER CONTINUING TRIAL AND
LUIS ANGEL CRUZ, a/k/a "TOKER", : FOR EXCLUSION OF TIME
Defendant.

Upon the motion of the United States, with the stipulation of the defendant by and through his counsel of record, and good cause appearing therefore, it is hereby ORDERED that the trial in this matter set for is continued to April 18,, 2005 at 10:00 a.m.

It is further ORDERED pursuant to 18 U.S.C. § 3161(8)(h)(A) that all time between and the new date be excluded from computation of time under the Speedy Trial Act.

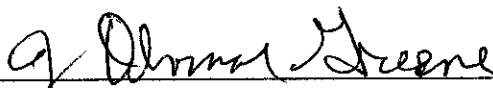
The Court finds that the ends of justice served by the continuance to the new date outweigh the best interests of the public and the defendant in a speedy trial based on the following:

1. Failure to grant the continuance would deny counsel for the defendant and the

25

government reasonable time for preparation, taking into account the exercise of due diligence.

DATED this 24th day of February, 2005.



J. THOMAS GREENE
United States District Judge

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cr-00105

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Michael P. Kennedy, Esq.
US ATTORNEY'S OFFICE

/
EMAIL

Viviana Ramirez, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

US Probation
DISTRICT OF UTAH

/
EMAIL

United States Marshal Service
DISTRICT OF UTAH

/
EMAIL

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

RECEIVED

FEB 25 2005

U.S. MAGISTRATE
JUDGE

UNITED STATES OF AMERICA,

:

N-05-51M

Plaintiff,

:

vs.

:

ORDER AUTHORIZING ISSUANCE
OF MATERIAL WITNESS
WARRANT

MELINDA JENSEN,

:

Defendant.

Based upon the motion of the United States and good cause appearing,

It is HEREBY ORDERED that a Warrant of Arrest issue for the arrest of MELINDA JENSEN, a material witness in the above-captioned proceeding. Upon her arrest, MELINDA JENSEN is to be brought before the nearest available magistrate for further proceedings under 18 U.S.C. § 3142.

DATED this 25 day of February 2005.

BY THE COURT:



United States Magistrate Judge

3

asb

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-m -00051

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr Carlos A Esqueda, Esq.
US ATTORNEY'S OFFICE

/
EMAIL

United States Marshal Service
DISTRICT OF UTAH

/
EMAIL

US Probation
DISTRICT OF UTAH

/
EMAIL

FILED
CLERK'S OFFICE
FEB 25 A 9 03

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH,
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STANLEY L. WADE and JANET B. WADE
Defendants.

ORDER ON *JAMES* HEARING

Case No. 2:04-CR-141 TS

This matter is before the Court on the Government's Submission on the Existence of the Conspiracy filed with the Court on November 30, 2004. On December 1, 2004, Defendant Stanley L. Wade filed his Pre-*James* Hearing Memorandum in response. While Defendant Janet B. Wade did not file a pre-hearing memorandum, her counsel, along with counsel for Mr. Wade and the Government, participated in the *James* hearing held before the Court on December 3, 2004. At the hearing the Court received evidence and considered arguments of counsel. At the close of the *James* hearing, the Court and counsel agreed, given the complex factual issues at play, that giving counsel the opportunity to submit proposed findings in writing would prove helpful. On January 18, 2005, the Government and Mr. Wade filed proposed findings of fact. On the same date, Mrs. Wade filed a motion asking the Court to provide her an extension of time

170

to file her findings of fact in light of ongoing negotiations between her and the Government with regards to a diversion agreement. On February 9, 2005, Mrs. Wade filed a notice with the Court that she did not intend to file proposed findings of fact with regard to the *James* hearing.

The Court, having considered all arguments and evidence offered by the parties, now rules on this matter and finds that the Government has met its burden with regard to establishing the existence of a conspiracy between Defendants and that therefore, the exception to the hearsay rule for statements of co-conspirators is applicable. The Court's rationale is laid out more fully below.

I. INTRODUCTION

The Indictment at issue alleges a conspiracy between Mr. Wade and Mrs. Wade (Defendants). According to the Indictment, Defendants agreed to impede, impair, obstruct and defeat the efforts of the Internal Revenue Services (IRS) to ascertain, compute, assess, and collect income taxes. The alleged conspiracy specifically involved attempting to evade tax liability owing from 1982 through 1984 and to defeat the assessment and collection of taxes on Defendants' 1992-2000 tax returns. The Government's Indictment claims the conspiracy involved Defendants transferring ownership of numerous apartment complexes to entities Defendants referred to as "Unincorporated Business Organizations" (UBOs). Once ownership was transferred, Defendants did not claim any income generated by these apartment complexes on their personal income taxes. The UBOs did not claim this income either and, in fact, did not file tax returns.

II. LAW GOVERNING *JAMES* HEARING

A. *James* Hearing

Under Fed. R. Evid. 801(d)(2)(E), co-conspirator statements are not considered hearsay and may properly be admitted if the Government shows by a preponderance of the evidence that (1) a conspiracy existed, (2) both the declarant and the defendant were members of the conspiracy, and (3) the declarant made the statement in the course of and in furtherance of the conspiracy. United States v. Eads, 191 F.3d 1206, 1210 (10th Cir. 1999). Linking the defendant to the conspiracy, however, requires some independent evidence besides the co-conspirators' statements, although the independent evidence need not be substantial. U.S. v. Lopez-Gutierrez, 83 F.3d 1235, 1244 (10th Cir. 1996). Presentation of this evidence is the purpose of the *James* hearing.

In deciding whether the offering party has satisfied its burden at a *James* hearing, the district court has the discretion to consider any evidence not subject to a privilege, including the co-conspirator statements the government seeks to introduce at trial and any other hearsay evidence, whether or not that evidence would be admissible at trial. U.S. v. Owens, 70 F.3d 1118, 1124 (10th Cir. 1995). It is important to note that the Government does not have to prevail in the *James* hearing to proceed on the conspiracy charge, only to proceed with the benefit of Fed. R. Evid. 801(d)(2)(E): "An indictment returned by a legally constituted and unbiased grand jury, like an information drawn by a prosecutor, if valid on its face, is enough to call for trial of the charge on the merits." U.S. v. Meyers, 95 F.3d 1475, 1485 (10th Cir. 1996) (conspiracy case) (citing Costello v. United States, 350 U.S. 359, 363 (1956)).

III. EXISTENCE OF A CONSPIRACY

The government must prove the following elements in order to sustain a conspiracy conviction: (1) there was an agreement to violate the law; (2) the defendant knew the essential objectives of the conspiracy; (3) the defendant knowingly and voluntarily took part in the conspiracy; and (4) the co-conspirators were interdependent. U.S. v. Lopez-Gutierrez, 83 F.3d 1235, 1244 (10th Cir. 1996). The government may prove these elements directly or circumstantially. United States v. Evans, 970 F.2d 663, 668 (10th Cir. 1992), cert. denied, 113 S. Ct. 1288 (1993).

A. Agreement to Violate the Law

In order to make a finding that Defendants made an agreement for an illegal purpose, the Court must determine that (1) there was an agreement between or among Defendants and (2) the purpose of this agreement was illegal.

1. Agreement

No evidence has been presented to the Court regarding a specific, formal agreement between Defendants to evade and defeat taxes. However, an agreement need not be formal but may be inferred from the acts of the alleged co-conspirators. United States v. Evans, 970 F.2d 663, 669 (10th Cir. 1992) cert. denied, 507 U.S. 922 (1993). To establish the element of agreement, the prosecution must show “a unity of purpose or a common design and understanding with co-conspirators to accomplish one or more of the objects of the conspiracy.” U.S. v. Edwards, 69 F.3d 419, 430 (10th Cir. 1995).

The Court has ample evidence to reasonably infer that an agreement took place. While the Court details specific actions taken by each Defendant below, the Court makes several observations here. The fact that Defendants placed many of their most valuable assets and the money generated by the apartments under the umbrella of the UBOs, suggests that the parties had made such an agreement. Furthermore, the Court finds that Defendants failed to report the vast majority of funds used for Defendants' private use on their personal taxes and that the UBOs were consistently—if not exclusively—used to make purchases to benefit Defendants. Additionally, all evidence presented to the Court suggests that Defendants' primary motive in creating the UBOs was to avoid taxes.

2. Illegal Purpose

The next question is whether Defendants' violated the law by agreeing to avoid past and ongoing tax liability by creating UBOs, placing assets within control of the UBOs, and failing to inform the IRS of the income generated by those assets. The government alleges that these actions constitute an illegal attempt to evade and defeat taxes. Under 26 U.S.C. § 7201, it is a felony for any person to “‘willfully attempt[] in any manner to evade or defeat any tax’ imposed under the Internal Revenue Code. In order to prove a defendant guilty of tax evasion, the government must show (1) a substantial tax liability, (2) willfulness, and (3) an affirmative act constituting evasion or attempted evasion.” U.S. v. Anderson, 319 F.3d 1218, 1219 (Utah 2003).

a. Substantial Tax Liability

The Court finds Defendants have a substantial unpaid tax liability. On one hand, the Court has reviewed the tax forms submitted by Defendants that show that Defendants claimed

very modest tax liability for the years in question. On the other hand, the Court heard evidence regarding the assets Defendants enjoyed and controlled, including several homes, extensive personal property, several apartment complexes, and the money produced by the rentals of such apartments. The disparity between reported income and assets and actual income and assets is striking. By way of example, on the tax returns for the year prior to the creation of the UBOs, Defendants claimed income of \$1,443,734 as a result of the apartment rentals and a year later the rental income was limited to \$35,400. The evidence presented at the hearing suggests that this diminished claimed income can be explained by the fact that Defendants transferred these apartments to the UBOs and stopped reporting this income on their personal taxes. In addition to current tax liability, the Government has proffered uncontradicted evidence that Mr. Wade had agreed to pay back taxes dating back to the 1980s. According to uncontradicted balances computed by the IRS for the tax years 1982, 1983, and 1984, Defendants owe substantial sums for each year. Based on calculations completed by the IRS on May 26, 2004, Defendants still owed the IRS \$248,492.49 for their 1982 taxes and \$580,561.67 for their 1983 taxes. Furthermore, according to separate calculations by the IRS on the same date, Mr. Wade owed the IRS \$666,581.07 for his 1984 taxes, and Mrs. Wade owed the IRS \$395,710.75 for the same year. The Court has no trouble finding that Defendants had a substantial tax liability throughout the duration of the alleged conspiracy.

b. Willfulness

The evidence presented at the *James* hearing that showed that Defendants showed a willfulness to evade and defeat tax liability. During the hearing, the Court received convincing

evidence that at the inception of the proposed plan and during its duration, Defendants understood the primary purpose of the UBOs was to avoid paying and being assessed taxes. This is laid out in some detail below in the Court's discussion of Defendants' knowledge of the essential objectives of the conspiracy. The Court also finds that Defendants acted voluntarily, the basis for which is laid out in the Court's discussion below regarding whether Defendants acted knowingly and voluntarily.

c. Affirmative Acts

The evidence received at the hearing illustrated that both Defendants took affirmative acts to further their goal to evade and defeat taxes. While the Court details Defendants' specific actions below, the Court generally notes that among other actions, Defendants placed a great deal of money and physical assets into the UBOs and that many of these assets, specifically apartment complexes, continued to generate significant revenue once under the umbrella of the UBOs. All evidence suggests that Defendants attempted to shield these funds from the assessment of current taxes and the payment of back taxes. Defendants did not use these assets or revenues to pay prior tax liabilities and did not claim most of the generated revenues as taxable income on their personal taxes. The Court notes that certified transcripts taken by the IRS and presented at the hearing illustrate that the UBOs did not file entity tax returns.

B. Knowledge of the Essential Objectives of the Conspiracy

At the *James* hearing, the Court heard ample evidence supporting the finding that Defendants had knowledge that the primary objective of forming and maintaining the UBOs was to avoid and defeat taxes. Mr. Adam Passey, Defendants' nephew and former employee, and Mr.

Marvin Haney, Defendants' former accountant, testified that even before forming the UBOs, Mr. Wade intended to use the UBOs for this purpose. While it is not clear when Mrs. Wade first understood that UBOs were being used to skirt tax liability, the government's evidence supports the finding that Mrs. Wade knew of the improper use of the UBOs before their inception or shortly thereafter. Mr. Passey testified that Mrs. Wade knew that the purpose of the UBOs was in large part to avoid taxes when she signed her joint ownership of the apartments over to several corporations, which apartments, shortly thereafter, were transferred to the UBOs. The Court notes that Mrs. Wade's signature was necessary to transfer the apartments from joint ownership between Mr. and Mrs. Wade to the UBOs, and that she also signed, along with Mr. Wade, Defendants' 1992 tax forms as well as tax returns for the subsequent years at issue.

The evidence suggests that Mrs. Wade was skeptical of the legality of use of the UBOs to avoid taxes from nearly the inception of these organizations and continually during Defendants' use of the UBOs. Mr. Haney testified that he had conversations with Mrs. Wade prior to filing Defendants' 1993 taxes, in which she expressed concern regarding the legal liability of using the UBOs to avoid current taxes and the failure of Defendants to pay taxes owed from their nonpayment of 1982-1984 taxes. Additionally, Mr. Haney and Mr. Passey testified that, during the 1990s, they individually witnessed Defendants' frequent and sometimes animated discussions regarding the use of the UBOs to avoid Defendants' current joint tax liability and to avoid paying their tax liability remaining from the 1980s.

Mr. Wade at least initially expressed doubts about using the UBOs to avoid tax liability. Mr. Passey testified that Mr. Wade was skeptical when he first heard of the idea of using UBOs

to shelter taxes. Mr. Passey, Mr. Haney, and another former employee of Defendants, Mr. Troy Powell, all testified that Mr. Wade welcomed and even solicited conversations regarding the legality of using the UBOs to avoid taxes and that this was often a topic of much dispute.

The Court heard evidence that many persons attempted to convince Defendants of the impropriety and even illegality of using the UBOs to avoid taxes. Mr. Passey testified that on a number of occasions he told Mr. Wade that the use of UBOs seemed unlikely to be legal. Mr. Powell testified that he also told Mr. Wade numerous times that he suspected that the use of the UBOs was not proper. The Court notes that there is some conflict in the evidence as to what exactly Mr. Haney told Defendants; however, the weight of the evidence suggests at least Mr. Haney expressed skepticism as to the legality of using the UBOs to avoid taxes. Additionally, Mr. Passey testified that several of Mrs. Wade's friends suggested that the UBO arrangement was likely to be improper. This, however, did not dissuade Defendants from forming and using the UBOs.

The Court finds that the evidence weighs in favor of finding that Defendants knew that their use of the UBOs was illegal. The fact that Defendants had knowledge that the purpose of forming the UBOs was to skirt the IRS and avoid taxes was reconfirmed by nearly all of the evidence presented at the hearing. The evidence suggests that both Defendants had knowledge that the primary objective in forming and maintaining the UBOs was to evade and defeat tax liability.

C. Defendants Acted Knowingly and Voluntarily

In assessing whether each Defendant acted knowingly and voluntarily, the Court will consider each Defendant's actions separately.

1. Mr. Wade

The Court heard uncontradicted testimony that the idea to use the UBOs first came to Mr. Wade through a business acquaintance, Mr. Paul Stewart. Mr. Passey testified that Mr. Wade acted very skeptical of the legality of using UBOs to avoid tax liability as he listened to Mr. Stewart but that subsequently, he warmed up to the idea. Once Mr. Wade became convinced to use the UBOs to avoid tax liability, he then undertook the task of convincing Mrs. Wade to join him in this scheme. Mr. Passey and Mr. Haney testified of overhearing and witnessing discussions between Defendants regarding the legality of their use of the UBOs and their failure to pay their tax liability from the 1980s. Despite Mrs. Wade's sporadic resistance, Mr. Wade proceeded unabated.

The Court also finds that the weight of the evidence suggests that Mr. Wade was the central player in running the UBOs. Mr. Haney testified that Mr. Wade assisted him in completing Defendants' 1992 tax return and instructed Mr. Haney not to claim any of the rents collected by the apartment complexes controlled by the UBOs. At the hearing, when asked, "[W]ho was in complete control [of the UBOs]?" Mr. Haney responded, "Stan Wade." Mr. Passey, when asked whether "there [was] any real difference in control between the UBOs and Stan Wade," answered, "No. That's a question—I can say there really was no difference." Consistent with the evidence that the Court received at the *James* hearing, the Court finds that

most of the major decisions with regard to how the UBOs operated were decisions made by Mr. Wade.

To the extent that major UBO decisions were made by others, their involvement was requested and directed by Mr. Wade. Individuals connected with the UBOs, regardless of their position with these entities, saw Mr. Wade's commands as paramount. For example, Mr. Haney testified that twice Mr. Wade asked him to serve as trustee of one of the UBOs for a limited purpose of transferring money and for a very short time period. Mr. Haney testified that Mr. Wade asked him to serve as trustee of the Palisades UBO for the limited purpose of making a high-risk investment on behalf of Mr. Wade. Mr. Haney testified that he was a trustee for less than one hour and transferred \$2,000,000 as instructed by Mr. Wade. Mr. Passey and Mr. Powell also testified that when doing the work of the UBOs, they would receive directions almost exclusively from Mr. Wade.

The Court notes, as is detailed further below, that Mr. Wade had to work to keep Mrs. Wade allied with him on this scheme. Mr. Passey's uncontradicted testimony also highlights the role of Mr. Wade in making many purchases with UBO funds for Defendants' personal use, including a Salt Lake City home on Walker Lane, a Las Vegas home on Happy Lane, a Corvette, a Porsche, and various water craft. The Court finds that Mr. Wade failed to make even minimal efforts to claim any of the money taken out of the UBOs for his personal use on his income tax returns.

2. Mrs. Wade

As previously noted, once Mr. Wade decided to use UBOs to escape tax liability, he then undertook the task of enlisting Mrs. Wade into this scheme. According to the evidence presented at the *James* hearing, Mr. Wade found in Mrs. Wade a dubious partner. Among other things, Mr. Haney and Mr. Passey testified that Mrs. Wade expressed doubts to Mr. Wade and others regarding the legality of the scheme. According to Mr. Haney's testimony, Mrs. Wade had numerous conversations with Mr. Haney in which she discussed strategies to distance herself from Mr. Wade and their use of the UBOs. The weight of the evidence suggests that Mrs. Wade was concerned that the ploy of using UBOs to avoid taxes would result in criminal liability and that she was weary of attaching herself too closely with the scheme.

While Mrs. Wade was certainly reluctant, the evidence still favors a finding that she voluntarily participated in this scheme. Her assistance was necessary to create the UBOs and place the apartment complexes in the control of the UBOs. It required her signature as well as that of Mr. Wade. Further, she, along with Mr. Wade, enjoyed the use of assets purchased by the UBOs for Defendants' personal use, including, among other things, homes and cars.

Evidence was presented to the Court that Mrs. Wade, along with Mr. Wade, signed checks in the name of the UBOs to further the building of Defendants' Walker Lane home. As an illustrative example of Defendants' purchases, the Government introduced a copy of various checks signed at different times by Mrs. Wade using UBO checks to purchase approximately \$15,000 in tile for Defendants' Walker Lane home. Moreover, Mr. Passey testified that Mrs.

Wade purchased the property where the Walker Lane home now sits without first consulting Mr. Wade.

Additionally, subsequent to the preparation of Defendants' 1992 taxes and during the relevant time period, Mrs. Wade assisted Mr. Haney in preparing Defendants' tax returns. In doing this, she kept records and provided the underlying information to Mr. Haney. In separating the roles of Defendants for the Court, Mr. Haney explained, "[Mr. Wade] just controlled and supervised and got things done. And Janet kept the records" The Court finds that her role was instrumental not only in preparing the taxes but also in failing to report the excess income collected by the UBOs on her taxes.

Mr. Haney and Mr. Passey both testified of their knowledge of Mrs. Wade's efforts to collect rents from the UBO apartments. Mr. Passey explained that her role went beyond collection—characterizing her as a bookkeeper. He explained that her efforts in this respect were meticulous. He testified that "if any manager made a mistake [with regard to their reporting to Mrs. Wade], I mean it was generally known Janet was going to find it." While Mr. Wade was the driving force behind the UBO scheme, this does not diminish that Mrs. Wade assisted him in these efforts.

The Court also heard testimony that Mr. Wade could, at times, be overbearing in pressuring Mrs. Wade to participate in the UBO scheme. However, despite the apparent pressure she received from Mr. Wade, the Court finds the evidence suggests that Mrs. Wade acted independently and voluntarily. The Court notes that Mrs. Wade showed her independence from Mr. Wade by purchasing the Walker Lane property and soliciting Mr. Haney's accounting

expertise. She also demonstrated her own competence in her fastidiousness as a bookkeeper for the UBO apartments. The parties presented no convincing evidence that suggests she was forced to assist Mr. Wade in these efforts, and certainly nothing that would erode her independence from a conspiracy that lasted approximately a decade. While perhaps not always comfortable with the way Mr. Wade controlled the UBOs, Mrs. Wade independently determined that she would assist him even though she was troubled by the risk such assistance posed.

Under the standard to be applied by this Court for the *James* hearing, the Court finds that the decision to entrust her share of Defendants' joint assets with the UBOs was hers, as was the decision to collect rents, deposit funds, report income for tax purposes, and perform essential bookkeeping tasks. While perhaps somewhat hesitant to participate in the UBO scheme and to commit acts as egregious as those of Mr. Wade, the Court finds that sufficient evidence exists to find that Mrs. Wade participated independently and willingly.

D. Interdependence of Defendants

The Court finds that Defendants acted interdependently in initiating and sustaining their UBO scheme. First, the Court notes that it took the signatures of both Defendants to place the apartment complexes under the control of the UBOs. Had not both Defendants been willing to transfer these assets, Defendants would not have been effective in hiding assets and funds from the IRS. Second, it took the willingness and efforts of both Defendants to fail to claim the true revenues generated by the apartment complexes. This is particularly the case because through most of the relevant period, Defendants filed separate tax returns. Third, Defendants played separate roles in evading and defeating taxes with the use of UBOs. Mr. Wade was the driving

force and the manager of most of the decisions made by the UBOs. Mrs. Wade, on the other hand, kept track of the rental revenues generated by apartments managed by the UBOs, prepared bank statements, and handed over tax materials to their accountant. While Mrs. Wade's role may not have been as significant or egregious as that of Mr. Wade, the conspiracy relied upon both Defendants' efforts and willingness.

E. Finding of Conspiracy

The Court finds that based on the preponderance of the evidence that the Government has shown an existence of a conspiracy between Defendants to evade and defeat taxes by the use of non-taxpaying UBOs to hide Defendants' personal income. Defendants agreed to use the UBOs to avoid disclosing assets and income to the IRS, despite warnings from their employees, accountant, and lawyer that such a strategy would violate the law. Defendants proceeded to engage in this deception both knowingly and voluntarily. The actions of Defendants were both interdependent and necessary in giving birth and perpetuating this scheme. Evidence beyond hearsay evidence, including admissible physical evidence, strongly supports the finding that both Defendants were members of the illegal conspiracy.

IV. MEMBERS OF THE CONSPIRACY

To show that someone was a member of a conspiracy, the Government must show that a person "knew the objective of the conspiracy . . . , that he voluntarily participated, . . . that he acted to further the objectives of the conspiracy," and that he "took essential and integral steps to further the conspiracy. U.S. v. Stiger, 371 F.3d 732, 739 (10th Cir. 2004).

These findings necessary to establish that Defendants were members of the conspiracy are encapsulated in the findings related to the conspiracy itself above. Specifically, as detailed above, the Court has already set forth findings that both Defendants knew the objective of the conspiracy and that both Defendants participated in the conspiracy voluntarily. Furthermore, in assessing that both parties acted voluntarily and knowingly, the Court detailed the specific acts both Defendants took that furthered the objectives of the conspiracy. Finally, the Court has addressed and found, in addressing the interdependence of Defendants, that both took essential and integral steps to further the conspiracy.

V. STATEMENTS MADE IN FURTHERANCE OF THE CONSPIRACY

The Government has provided a list of six illustrative statements that are representative of the types of statements the Government hopes to introduce at trial that were made in furtherance of the conspiracy. While noting that other exceptions to the rule against hearsay may also cover the statements the Government has offered as examples, the Court finds that each of these are co-conspirator statements within the exception found under Fed. R. Evid. 801 for statements made in furtherance of a conspiracy. The Court will consider other potential statements as those statements are specifically brought to the Court's attention during trial or in pretrial motions.

The Court notes that the Government states in its Pre-*James* Hearing Memorandum that the Government would attempt to provide notice to Defendants of the Government's intention to introduce other hearsay statements under the exception to hearsay found in Fed. R. Evid. 801. The Court directs the Government that to the extent feasible it should provide the Court and Defendants with such notice by March 2, 2005.

VI. CONCLUSION

The Court, therefore,

FINDS, by a preponderance of the evidence, that a conspiracy existed to evade and defeat Defendants' past and current taxes and that both Defendants were members of such a conspiracy.

The Court further

FINDS that the exception to the rule against hearsay that dealing with the statements of co-conspirators is applicable under Fed. R. Evid. 801 and that the six illustrative statements the Government provided in its Pre-*James* Hearing Memorandum would qualify as admissible hearsay under this exception. The Court

DIRECTS the Government that, to the extent feasible, it should provide the Court and Defendants notice of any potential statements that it wishes to introduce under this exception by March 2, 2005.

SO ORDERED.

DATED this 24th day of February, 2005.

BY THE COURT:



TED STEWART
United States District Court Judge

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00141

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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FILED 24 P 3

2005 FEB 23 P 4: 19

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JUDGE TENA CAMPBELL

U.S. DISTRICT COURT
DISTRICT OF UTAH

Attorneys for Defendant JLO, L.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

ALPS ELECTRIC (NORTH AMERICA),
INC., a California corporation,

Plaintiff,

vs.

JLO, LC, a Utah limited liability company, as
securityholders representative for certain
former shareholders and option holders of
Cirque Corporation, a Utah corporation,

Defendants.

ORDER OF DISMISSAL

Case No. 2:04 CV 00553 TC

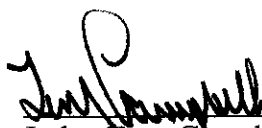
Judge Tena Campbell

Magistrate Judge Brook C. Wells

Based on the Stipulation of the parties and good cause appearing therefore, the Court hereby dismisses all claims and counterclaims in this case with prejudice, each party to bear their own costs and attorneys fees.

DATED this 24 day of February, 2005.

BY THE COURT:




Judge Tena Campbell

23

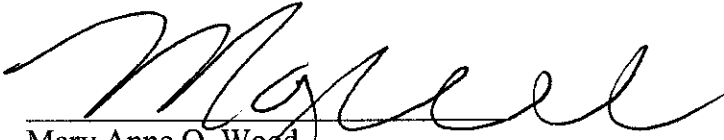
APPROVED AS TO FORM:

HOLME ROBERTS & OWEN LLP



Jay D. Gurmankin
Attorneys for JLO, LC

WOOD CRAPO, LLC



Mary Anne Q. Wood
Attorneys for Alps Electric (North America), Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of February, 2005, I served a true and correct copy of the foregoing **ORDER OF DISMISSAL** via U.S. Mail, postage prepaid, upon the following:

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Judi Rouse

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00553

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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FEB 24 P 3:10

OFFICE OF
JUDGE TENA CAMPBELL

2005 FEB 23 P 6:23

U.S. DISTRICT COURT
DISTRICT OF UTAH

Proposed Order Submitted By:

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*Attorneys for David K. Broadbent, as Receiver
for Merrill Scott & Associates, Ltd., et al.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff and Intervention Defendant,

v.

MERRILL SCOTT & ASSOCIATES, LTD.;
MERRILL SCOTT & ASSOCIATES, INC.;
PHOENIX OVERSEAS ADVISERS, LTD.;
GIBRALTAR PERMANENTE ASSURANCE,
LTD.; PATRICK M. BRODY; DAVID E. ROSS
II and MICHAEL G. LICOPANTIS,

Defendants.

DAVID K. BROADBENT, ESQ., as RECEIVER
for MERRILL SCOTT & ASSOCIATES, LTD.;
MERRILL SCOTT & ASSOCIATES, INC.;
PHOENIX OVERSEAS ADVISERS, LTD.;
GIBRALTAR PERMANENTE ASSURANCE,
LTD.; and each of their respective
SUBSIDIARIES and AFFILIATED ENTITIES,

Third-Party Plaintiff,

v.

CERTAIN UNDERWRITERS AT LLOYDS,
LONDON; and JAMES P. LANDIS,

Third-Party Defendants.

**ORDER EXTENDING TIME
TO FILE RECEIVER'S RESPONSE
TO THE WOODS' MOTION FOR
SUMMARY JUDGMENT**

Civil No. 2:02CV-0039C (Lead Case)

Civil No. 2:04CV-00931TC (Member Case)

Judge Tena Campbell
Magistrate Judge David Nuffer

445

CHARLES COZEAN,

Intervention Plaintiff,

v.

DAVID K. BROADBENT, ESQ., as RECEIVER
for MERRILL SCOTT & ASSOCIATES, LTD.;
MERRILL SCOTT & ASSOCIATES, INC.;
PHOENIX OVERSEAS ADVISERS, LTD.;
GIBRALTAR PERMANENTE ASSURANCE,
LTD.; and each of their respective
SUBSIDIARIES and AFFILIATED ENTITIES,
and U.S. SECURITIES AND EXCHANGE
COMMISSION,

Intervention Defendants.

RIO DE CABALLOS, LC, a Nevada limited
liability company; THE CURT AND KATHY
WOODS CHARITABLE SUPPORTING
FOUNDATION, a Texas trust; CURT WOODS,
as an individual; and KATHY WOODS, as an
individual;

Plaintiffs,

vs.

DAVID K. BROADBENT, as RECEIVER for
MERRILL SCOTT & ASSOCIATES, LTD.;
MERRILL SCOTT & ASSOCIATES, INC.;
PHOENIX OVERSEAS ADVISORS, LTD.;
GIBRALTAR PERMANENTE ASSURANCE,
LTD.; and each of their respective SUBSIDIARIES
and AFFILIATED ENTITIES,


Defendants.

Good cause having been shown,

IT IS HEREBY ORDERED THAT the Receiver shall file a response to Plaintiffs' Motion for Summary Judgment on or before Friday, March 25, 2005.

DATED this 24 day of February, 2005.

BY THE COURT:


The Honorable Tena Campbell
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 23 day of February, 2005, I caused a true and correct copy of the foregoing document(s) to be served on the parties involved, listed below, addressed as follows:

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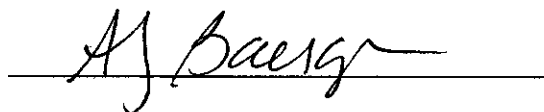
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Attorneys for Charles Cozean

A handwritten signature in cursive script, appearing to read "A. J. Baerger", is written over a horizontal line.

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00039

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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Mr. Lon A Jenkins, Esq.
LEBOEUF LAMB GREENE & MACRAE LLP
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JFAX 9,3598256

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2005
IN THE UNITED STATES DISTRICT COURT
OFFICE OF
JOHN H. HARRIS
CENTRAL DIVISION

FILED
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CLERK U.S. DISTRICT COURT
FEB 23 2005
2005 FEB 24 P 3:09
U.S. DISTRICT COURT

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

V.

TENFOLD CORPORATION, GARY D.
KENNEDY, ROBERT P. HUGHES, STANLEY
G. HANKS, AND WYNN K. CLAYTON,

Defendants.

Case No. 2:03-CV-00442 TC

**ORDER GRANTING JOINT MOTION
REGARDING EXTENSION OF TIME
FOR RESPONSES TO GARY D.
KENNEDY'S THIRD SET OF
INTERROGATORIES**

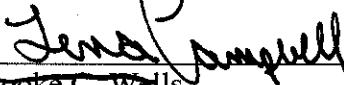
The parties have filed a joint motion concerning the SEC's responses to Gary D. Kennedy's third set of interrogatories. There is good cause for granting the requested modifications to the October 10, 2003 Scheduling Order.

IT IS THEREFORE ORDERED that the following modifications be made to the Scheduling Order:

1. The SEC's responses to Gary D. Kennedy's third set of interrogatories are now due on March 11, 2005.
2. Mr. Kennedy has until April 8, 2005 to file a motion to compel concerning these responses, if necessary.

Dated this 23 day of February, 2005.

BY THE COURT:



Brooke C. Wells
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 2005, I caused to be sent, via the method indicated, a true and correct copy of the foregoing **ORDER GRANTING JOINT MOTION REGARDING EXTENSION OF TIME FOR RESPONSES TO GARY D. KENNEDY'S THIRD SET OF INTERROGATORIES**, to:

THOMAS M. PICCONE
THOMAS CARTER
LESLIE HENDRICKSON HUGHES
SECURITIES AND EXCHANGE COMMISSION
1801 California Street, Suite 1500
Denver, Colorado 80202-2656

Via U.S. Mail

THOMAS M. MELTON
SECURITIES AND EXCHANGE COMMISSION
50 South Main Street, Suite 500
Salt Lake City, Utah 84144

Via U.S. Mail

PERRIN R. LOVE
CLYDE SNOW SESSIONS & SWENSON
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Salt Lake City, Utah 84111

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STUART L. GASNER
RACHAEL MENY
STEVE TAYLOR
KEKER & VAN NEST LLP
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San Francisco, California 94111

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LAURENCE STORCH
IRVING M. POLLACK
DILWORTH PAXSON LLP
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JAMES S. JARDINE
MARK W. PUGSLEY
RAY QUINNEY & NEBEKER
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84125

Via U.S. Mail



United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00442

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DENVER, CO 80202-2648
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FEB 24 2005

OFFICE OF
JUDGE TENA CAMPBELL

FILED
CLERK, U.S. DISTRICT COURT

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FEB 23 2005

U.S. DISTRICT COURT

Wesley D. Hutchins, #6576
John Edward Hansen, #4590
SCALLEY & READING, P.C.
Attorneys for Plaintiffs
50 South Main Street, Suite 950
P.O. Box 11429
Salt Lake City, Utah 84147-0429
Telephone: (801) 531-7870
Facsimile: (801) 531-7968

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

BARBARA JOHNSON, surviving wife and:
heir of ERNEST W. JOHNSON (deceased),
and FAY HUBBARD, and BARBARA
MATHERS, children and heirs of ERNEST
W. JOHNSON (deceased),

Case No.: 2:04CV00839TC

PLAINTIFFS,

SCHEDULING ORDER

vs.

UNITED STATES OF AMERICA,

Judge: Tena Campbell

DEFENDANT.

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge received the Attorneys' Planning Meeting Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

9

1. PRELIMINARY MATTERS**DATE**

Nature of claim(s) and any affirmative defenses:

- | | |
|---|-------------|
| a. Was Rule 26(f)(1) Conference held? | Yes 2/7/05 |
| b. Has Attorney Planning Meeting Form been submitted? | Yes 2/18/05 |
| c. Was 26(a)(1) initial disclosure completed? | Yes 2/11/05 |

2. DISCOVERY LIMITATIONS**NUMBER**

- | | |
|---|-----------|
| a. Maximum Number of Depositions by Plaintiffs | 10 |
| b. Maximum Number of Depositions by Defendant | 10 |
| c. Maximum Number of Hours for Each Deposition
(unless extended by agreement of the parties) | 7 |
| d. Maximum Interrogatories by any Party to any Party | 25 |
| e. Maximum requests for admissions by any Party to any Party | unlimited |
| f. Maximum requests for production by any Party to any Party | unlimited |

3. AMENDMENT OF PLEADINGS/ADDING PARTIES**DATE**

- | | |
|---|---------|
| a. Last Day to File Motion to Amend Pleadings | 6/15/05 |
| b. Last Day to File Motion to Add Parties | 6/15/05 |

4. RULE 26(a)(2) REPORTS FROM EXPERTS

- | | |
|--------------------|----------|
| a. Plaintiff | 8/31/05 |
| b. Defendant | 10/31/05 |
| c. Counter Reports | 11/30/05 |

5. OTHER DEADLINES

- | | |
|--|----------|
| a. Discovery to be completed by: | |
| Fact Discovery | 7/31/05 |
| Expert Discovery | 12/15/05 |
| b. Final date for supplementation of disclosures and | |

discovery under Rule 26(e)	30 days before trial
c. Deadline for filing dispositive or potentially dispositive motions	2/28/06

6. SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION

a. Referral to Court-Annexed Mediation	no
b. Referral to Court-Annexed Arbitration	no
c. Evaluate case for Settlement/ADR on	12/15/05
d. Settlement probability	uncertain before 12/15/05

7. TRIAL AND PREPARATION FOR TRIAL:

a. Rule 26(a)(3) Pretrial Disclosures							
Plaintiffs	30 days before trial						
Defendants	30 days before trial						
b. Objections to Rule 26(a)(3) Disclosures	15 days after disclosures						
c. Special Attorney Conference on or before	_____						
d. Settlement Conference on or before	_____						
e. Final Pretrial Conference	_____						
f. Trial (4-5 day bench trial)	<table border="0"> <tr> <td><u>Length</u></td> <td><u>Time</u></td> <td><u>Date</u></td> </tr> <tr> <td>4-5 days</td> <td>_____</td> <td>_____</td> </tr> </table>	<u>Length</u>	<u>Time</u>	<u>Date</u>	4-5 days	_____	_____
<u>Length</u>	<u>Time</u>	<u>Date</u>					
4-5 days	_____	_____					

8. OTHER MATTERS:

Counsel should contact chambers of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the

qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

DATED this 24 day of February, 2005.

BY THE COURT:

Tense Campbell

U.S. ~~Magistrate~~ Judge

APPROVED AS TO FORM:

SCALLEY & READING, P.C.

Wesley D. Hutchins

Wesley D. Hutchins
John Edward Hansen
Attorneys for Plaintiffs

PAUL M. WARNER
United States Attorney

J. N. Allred

JAN N. ALLRED
Assistant United States Attorney
Attorneys for Defendant

alt

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00839

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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50 S MAIN ST STE 950
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SALT LAKE CITY, UT 84147-0429
EMAIL

Ms. Jan N. Allred, Esq.
US ATTORNEY'S OFFICE
/
EMAIL

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2005 FEB 24 P 3:09
DISTRICT OF UTAH
BY: _____
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IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DIRK T. SMITH and GESSICA J. SMITH,

Plaintiffs,

vs.

COUNTRYWIDE HOME LOANS, et al.,

Defendants.

ORDER

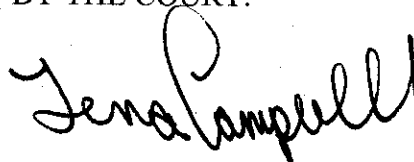
Case No. 2:04 CV 774 TC

Plaintiffs have asked for an enlargement of time to answer defendant's answer to plaintiffs' complaint. Under the rules of civil procedure, an answer to answer to complaint is not permitted.

The request for enlargement of time is DENIED.

DATED this 25 day of February, 2005.

BY THE COURT:



TENA CAMPBELL
United States District Judge

19

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00774

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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MATHESON MORTENSEN OLSEN & JEPPSON
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Ms. Carolyn B McHugh, Esq.
PARR WADDOUPS BROWN GEE & LOVELESS
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CLERK, U.S. DISTRICT COURT
2005 FEB 24 P 3:00
CLERK, U.S. DISTRICT COURT
2005 FEB -3 P 12:47
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JAMES T. DUNN #3785
Attorney for Plaintiff
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Facsimile: (801) 254-9246

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH NORTHERN DIVISION

UNITED STATES OF AMERICA FOR THE USE)
OF SUNSTATE EQUIPMENT COMPANY, a)
foreign limited liability company,)

Plaintiff,

vs.

OVERSTREET ELECTRIC COMPANY, INC.)
a foreign corporation, and ATLANTIC)
MUTUAL INSURANCE COMPANY, a)
foreign corporation,)

Defendants.)

STIPULATION AND
SETTLEMENT AGREEMENT

Civil No. 2:04CV01025 TC
Judge: Tena Campbell

ORDER

Plaintiff, and Defendant, Overstreet Electric Company, Inc., stipulate and agree to settle the
above entitled matter on the following terms:

1. Defendant shall pay the total principal balance of \$17,859.21, together with Court
costs of \$150.00, and attorney's fees of \$1,435.00.
2. Defendant shall also paid accrued interest in the total amount of \$1,464.58, and
interest @ 18% until paid in full.

*So ordered
Tena Campbell
2-23-2005*

4

3. Defendant shall pay \$2,500.00 immediately upon execution of this Settlement Agreement, and shall pay the remaining balance in four equal installments, beginning the last day of January, 2005 and continuing on the last day of each month thereafter until the entire balance has been paid.

4. If Plaintiff receives payment as outlined pursuant to the terms of this Stipulation, Plaintiff may enter without further notice to the Defendant, and have a Judgment entered for the amount then due and owing, having credited all payments made pursuant to the terms of this Stipulation.

5. If Judgment is entered, it will be supported by the Affidavit showing the failure to pay, and the Judgment will include a provision for such additional Court costs, interest and attorney's fees as are necessary to collect the Judgment.

6. In the event the Defendant performs and pays pursuant to the terms of this Stipulation and Settlement Agreement, Plaintiff will cause this matter to be dismissed with prejudice on payment in full.

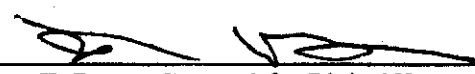
7. All payments will be made payable to Sunstate Equipment, and mailed or delivered to Plaintiff's counsel to arrive on or before their due date.

DATED this 31st day of JANUARY 2005
~~December, 2004.~~

OVERSTREET ELECTRIC COMPANY

BY: 

Its: PRESIDENT


James T. Dunn, Counsel for Plaintiff

alt

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-01025

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. James T. Dunn, Esq.
1108 W SOUTH JORDAN PKWY #A
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EMAIL

*So ordered
2-23-2005
Tena Campbell*

FILED
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DEPUTY CLERK
FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH
JAN 24 2005
MARK S. B. ZIMMER, CLERK
DEPUTY CLERK

David W. Slaughter (2977)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Makau Corporation
10 Exchange Place, Eleventh Floor
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Salt Lake City, Utah 84145
Telephone: (801) 521-9000

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

ORDER

**GLOBAL LEARNING SYSTEMS, INC. and
KEYSTONE LEARNING SYSTEMS
CORPORATION**

Bankruptcy Case No. (No Bankruptcy Case
Pending in this District)

Plaintiffs/Counterclaim defendants, et al.,

vs.

District Court No. 2:04-CV-294-TC

MAKAU CORPORATION, et al.

Defendants/Counterclaim plaintiffs.

**STIPULATION AND SETTLEMENT
AGREEMENT AND JOINT MOTION TO
DISMISS**

MAKAU CORPORATION, et al.,

Third-Party Plaintiff,

Judge Tena Campbell
Magistrate Judge Brook Wells

vs.

WACHOVIA BANK, N.A.,

Third-Party Defendants.

Plaintiffs Global Learning Systems, Inc. ("GLS"), and Keystone Learning Systems Corporation ("Keystone") (sometimes collectively referred to herein as "Plaintiffs") and defendant/counterclaimant and third-party plaintiff Makau Corporation ("Makau"), by and

[Handwritten signature]

through counsel, and in settlement and resolution of their mutual claims in this action, and of all disputes between them as of the date hereof, hereby stipulate and agree as follows:

1. Makau will pay \$25,000 to Keystone, by February 15, 2005, and will execute a \$100,000 promissory note payable to Keystone, without interest (except upon a late payment or in the event of uncured default, as provided below), in equal monthly installments commencing March 15, 2005 and payable on the 15th day of each month, over a period of three years, with an agreed cure period of 30 days on any late payment, provided that this grace period is not exercised more often than three times over the course of the note. Interest will accrue on any late payment at an annual rate of 10%. In the event of uncured default, judgment on the note may enter against Makau by confession and for the unpaid balance, plus a post-default interest rate of 15% per annum on said balance. The Note will also accelerate in the event of uncured default in the payment of royalties due from Makau on the production and sale of Keystone products, calculated as provided below. The Note will also provide for the payment of reasonably attorneys fees in the event of default.

2. Makau shall have the right, granted hereby, and for the period prescribed hereunder, to reproduce, market, sell and otherwise distribute existing Keystone products and related content, under Makau's formatting and brand, and in hard and electronic versions, as well as incorporated into Makau's learning library products, to end users, both directly and through all reseller channels. Notwithstanding the foregoing, however, the rights and license granted or ratified hereunder do not include rights to Keystone's LeanSixSigma leadership series product, nor to any Keystone products released after January 1, 2004. Makau will have no rights to

market or sell any Keystone products released after January 1, 2004, without Keystone approval, which approval may be made subject to a new license agreement for those products.

3. Keystone may continue to market to any and all resellers, provided that the marketing efforts do not include challenges to Makau's rights to distribute Keystone-based products and are not disparaging of Makau or its products or services.

4. Makau will not be restricted in its rights to promote, market and sell its own products (stripped of any Keystone content) to and through all markets, including reseller channels, including those products that may compete directly with Keystone titles, provided that such marketing does not disparage Keystone.

5. Through October 31, 2005, the parties agree not to utilize direct comparisons of their respective products (Makau product versus Keystone product or vice versa) as an active marketing tool for promoting their respective and competing products to new or prospective customers. Each party shall avoid such comparisons; however, this does not prohibit a party from responding to customer inquiries as to any substantive and objective differences between Makau and Keystone products, provided that neither party disparages the other's product, services, management or business.

6. Makau will appropriately represent all Keystone marks on the Keystone products (other than Keystone products incorporated into the Makau Learning Library) which it sells and take reasonable care to protect the copyright of Keystone in its products. The parties agree that

this requirement will be satisfied if Makau packaging includes notice to the effect that the product is presented "in association with and under license from Keystone Learning Systems."

7. Beginning February 1, 2005 and continuing through October 31, 2005, Makau will pay to Keystone royalties on sales of Keystone products as follows:

- a. "Hard copies" of products (videos, CDs, DVDs): Royalties calculated at twenty percent (20%) of the total revenue received by Makau from direct sales of Keystone products to resellers at discounts not exceeding 60% of MSRP, and thirty percent (30%) of revenue received from Keystone product sales at discounts exceeding 60%.
- b. "Hard copies" of products (videos, CDs, DVDs) to end users: Royalties calculated at thirty percent (30%) of the total revenue received by Makau from direct sales of Keystone products to end users.
- c. "Soft copies" of Keystone products delivered electronically: Royalties calculated at thirty percent (30%) of all revenue received from sales of Keystone products delivered on-line, by electronic fulfillment (without hard product).
- d. Makau Learning Library: Makau will pay to Keystone a royalty on all revenue (net of costs of hardware, OS and MySQL costs) received from the sales of Makau product libraries (however labeled) incorporating Keystone products at the following sliding rates: fifteen percent (15%) for all sales on orders received from and after February 1, 2005, and through June 30, 2005; and ten percent

(10%) for all sales on orders received from and after July 1, 2005 to the expiration of the license, including revenue from all renewals of pre-expiration sales thereafter.

8. The parties agree that Makau's MSRP for "free-standing" Keystone products for the purposes of calculated reseller discounts can be no lower than the lower of Keystone's MSRP for the same products or, if lower, Keystone's sale or promotional price for the same products over the same period of promotion. Makau will also not hereafter further discount the prices (as a percentage of MSRP) at which the Keystone products are sold to Makau's various resellers unless the parties agree (and subject to the royalty adjustments provided in paragraph 7(a)). Notwithstanding the foregoing, price restrictions will not apply to any sales of Keystone products incorporated into comprehensive Makau product libraries, however sold.

9. Royalties shall be payable 30 days after the end of each month for which royalties are calculated and will be submitted to Keystone with royalty reports. Makau shall have fifteen days to cure any default after notice. Royalty reports shall be accompanied by copies of supporting documents, including underlying invoices (from which Makau may, at its election, redact actual customer/reseller names and identifying information). After the termination of this agreement, Makau will continue to provide quarterly royalty reports to the extent that it continues to support extension or renewals of licensed sales of Keystone product sold prior to the termination date.

10. As of midnight, October 31, 2005, and barring the parties' agreement on an extended reseller arrangement acceptable to Makau and Keystone, Makau will waive and surrender all rights and license to sell or enter into new contracts to sell any Keystone product in any form, including any Makau product of which Keystone content is a component, including products incorporated into Makau's learning library. However, Makau will retain rights to fulfill any unfulfilled portions of any contracts entered into in the ordinary course of business prior to October 31, 2005, subject to the royalty obligations on such sales, as outlined herein.

11. Consistent with paragraph 10 above, and barring an extended license or similar agreement between the parties, Makau will return to Keystone all copies of Keystone courseware, software and intellectual property assets before November 15, 2005. After November 1, 2005, Keystone will be handle the fulfillment, except for obligations relating to Makau's learning libraries, of any Makau sale of Keystone product sold pursuant to a contract extending beyond October 31, 2005, subject to the royalty splits set forth herein, with Makau being responsible for the shipping costs. Each party will return to the other party, on or before March 1, 2005, any databases or copies of end-user customer lists, to the extent either party has possession of such lists or databases and shall not retain any copies of such end-user customer lists or databases or knowingly market to end-user customers from the other parties' database.

12. In the event of uncured defaults by Makau in the payments of royalties for Keystone products or in the payments of installments under the promissory note, the

parties agree that Keystone would be irreparably harmed and would be entitled to injunctive relief to prohibit further Makau sales (in any form) of Keystone product and to the immediate return of all of Keystone's intellectual property, including the return or destruction of any inventory of Keystone products. An uncured monetary default under the license agreement shall also result in the termination of the license granted to Makau hereunder.

13. Makau's royalty and note obligations shall not be subject to offset as against either plaintiff as a result of any claim or dispute arising hereafter.

14. Makau would agree to audits (at Keystone's expense and not more frequently than quarterly) by a third-party of the information relating to sales of Keystone product for the period beginning February 1, 2005, to the date of expiration or surrender of any license. William E. Chipman will personally guarantee payment of any established underpayment of royalties revealed by such audits. In the event Mr. Chipman terminates his relationship with Makau, Makau will provide a substitute personal guarantor reasonably acceptable to Keystone, for any royalty underpayment. The parties agree to mediation and (that failing) to arbitration of any dispute as to the scope or results of the audit.

15. The parties agree that during the term hereof, Makau may not authorize third-party private-labeling of the Keystone product or the incorporation of the Keystone

product into any other product offering, without the prior written consent of Keystone. This excludes the sale of Makau's learning libraries as authorized herein.

16. Except for the sale of Makau Learning Libraries, any new agreements for the sale of the Keystone Product by Makau shall only be entered into in the ordinary course of business, shall not extend past June 30, 2006 and, except as agreed by the parties, shall provide no greater discount than 60% off of MSRP. Makau shall take all steps necessary to ensure that no reseller or distributor is permitted to purchase, through Makau, Keystone product past October 31, 2005.

17. Notice by Keystone to Makau of any claimed default shall be give by confirmed fax or confirmed e-mail to wec@makaucorp.com at (attn: William E. Chipman) with a copy to David Slaughter by confirmed fax or confirmed e-mail to dslaughter@scmlaw.com.

18. Makau, Keystone and Rick James agree specifically that nothing herein shall determine the rights of Keystone or PPG, Inc. (a Makau subsidiary) to intellectual property assets of Rick James claimed by Keystone to have been purchased from the bankruptcy estate of Mr. James. To the extent that PPG or James desire to clear the title issues by reacquiring the assets from Keystone, they may do so by repaying to Keystone the amount paid to the James Bankruptcy Trustee for such assets.

19. Any communication to the partners, reseller market or other customers of either company, relating to the Makau/Keystone relationship, shall be jointly approved

and the principals of each company shall take reasonable steps to ensure that communications and representations to third parties by employees and representatives of their respective companies are consistent in scope and content with such pre-approved communications.

20. This effects a full settlement and resolution in satisfaction of claims and counterclaims between Keystone and Makau existing as of the date of this Stipulation. All claims in this lawsuit between Keystone and Makau, and between Keystone and any of the individual defendants, including all principals of these various parties, existing or otherwise arising as of and prior to the date hereof, are hereby waived and released by the parties hereto, and waiver and release of claims by and against any named individual defendant not expressly joining in this Stipulation and Settlement Agreement, directly or through counsel, is an express condition to the final settlement hereunder. In addition, Makau shall dismiss, without prejudice its counter-claim against Wachovia.

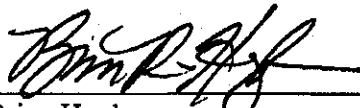
21. The parties agree that the settlement is of disputed claims and nothing herein shall be deemed or interpreted either as an admission by either party of fault or liability for claims asserted by the other in this action.

22. The parties acknowledge and understand that final settlement is subject to approval by the Bankruptcy Court in the GLS and Keystone bankruptcy proceedings, and shall cooperate in pursuing that approval.

23. The parties hereto jointly move the Court for its Order approving this Settlement and, upon any necessary approval by the Bankruptcy Court in the GLS and Keystone bankruptcies, dismissing this action and all claims, counterclaims and third party claims therein, with prejudice..

DATED this 24th day of January, 2005.

HILL, JOHNSON & SCHMUTZ, L.C.

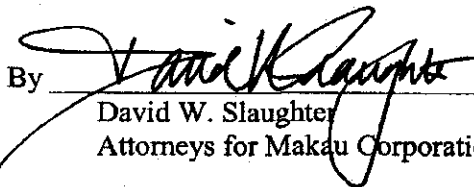
By 
Brian Hughes

and

MARCUS, SANTORO & KOZAK
Karen M. Crowley

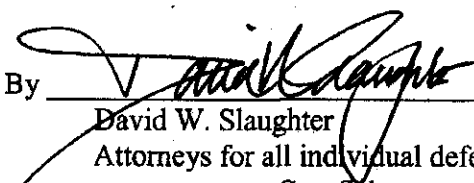
Attorneys for GLS and Keystone

SNOW, CHRISTENSEN & MARTINEAU

By 
David W. Slaughter
Attorneys for Makau Corporation

Approved and Joined:

SNOW, CHRISTENSEN & MARTINEAU

By 
David W. Slaughter
Attorneys for all individual defendants
except Curt Selz


Curt Selz, Pro Se

Acknowledged and Approved:

Makau Corporation

By _____

Keystone Learning Systems, Inc.

By _____

Global Learning Systems, Inc.

By _____

Curt Selz, Pro Se

Acknowledged and Approved:

Makau Corporation

By _____

42 | Keystone Learning Systems Corporation,

Deleted, Inc

By Lawrence Cates
PRESIDENT

Global Learning Systems, Inc.

By Lawrence Cates
PRESIDENT

Curt Selz, Pro Se

Acknowledged and Approved:

Makau Corporation

By

W. Selz
President

Keystone Learning Systems Corporation

By

Global Learning Systems, Inc.

By

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **STIPULATION AND SETTLEMENT AGREEMENT AND JOINT MOTION TO DISMISS**, was served on January 24, 2005, as follows:

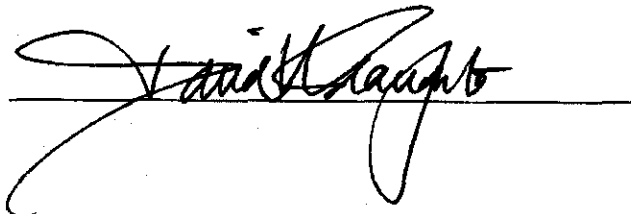
Karen M. Crowley (Via E-mail)
MARCUS, SANTORO & KOZAK, P.C.
1435 Crossways Blvd., Suite 300
Chesapeake, VA 23320

Brent C. Strickland (Via First Class Mail)
WHITEFORD, TAYLOR & PRESTON, L.L.P.
Seven Saint Paul Street, Suite 1400
Baltimore, Maryland 21202

Evan A. Schmutz (Via Hand Delivery)
Brian Hughes
HILL, JOHNSON & SCHMUTZ, L.C.
3319 N. University Avenue, #200
Provo, Utah 84604
Attorneys for Plaintiffs/Counterclaim Defendants Keystone

Jonathan Hauser (Via First Class Mail)
TROUTMAN SANDERS, LLP
222 Central Park Avenue, Suite 2000
Virginia Beach, Virginia 23462
Attorneys for Wachovia Bank, N.A.

John P. Ashton (Via Hand Delivery)
Thomas R. Barton
PRINCE, YEATES & GELDZAHLER
City Centre I, Suite 900
175 East 400 South
Salt Lake City, Utah 84111
Attorneys for Wachovia Bank, N.A.



A handwritten signature, likely "David K. Knight", is written over a horizontal line.

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00294

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. David W Slaughter, Esq.
SNOW CHRISTENSEN & MARTINEAU
10 EXCHANGE PLACE
PO BOX 45000
SALT LAKE CITY, UT 84145-5000
EMAIL

Brent Strickland, Esq.
SEVEN ST PAUL ST STE 1400
BALTIMORE, MD 21202-1626
EMAIL

Mr. Evan A Schmutz, Esq.
HILL JOHNSON & SCHMUTZ LC
3319 N UNIVERSITY STE 200
PROVO, UT 84604
EMAIL

Karen M. Crowley, Esq.
MARCUS SANTORO & KOZAK PC
1435 CROSSWAYS BLVD STE 300
CHESAPEAKE, VA 23320
EMAIL

Bankruptcy Clerk's Office
US BANKRUPTCY COURT
, 84101
EMAIL

John P. Ashton, Esq.
PRINCE YEATES & GELDZAHLER
175 E 400 S STE 900
SALT LAKE CITY, UT 84111
EMAIL

Jonathan L. Hauser, Esq.
TROUTMAN SANDERS LLP
222 CENTRAL PK AVE STE 2000
VIRGINIA BEACH, VA 23462

Robert A. Angle, Esq.
TROUTMAN SANDERS LLP
1111 E MAIN ST
RICHMOND, VA 23218-1122
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 24 A 10:08
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

TIMPANOGOS TRIBE, Snake Bank of
Shoshone Indians of Utah Territory,

Plaintiff,

vs.

KEVIN CONWAY, Assistant Director, Utah
Department of Natural Resources, Division of
Wildlife Resources,

Defendant.

UTE INDIAN TRIBE OF THE UINTAH AND
OURAY RESERVATION,

Intervenor-Defendant

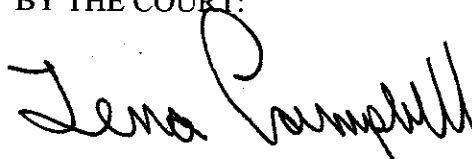
ORDER

Case No. 2:00 CV 734 TC

Before the court is plaintiff's *ex parte* Motion to Extend Time to File Notice of Appeal. For the reasons set forth in plaintiff's motion and for good cause shown, plaintiff is hereby granted a thirty day extension in accordance with Rule 4 of the Federal Rules of Appellate Procedure.

DATED this 23 day of February, 2005.

BY THE COURT:



TENA CAMPBELL
United States District Judge

1164

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:00-cv-00734

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Kimberly D. Washburn, Esq.
LAW OFFICES OF KIMBERLY D WASHBURN
405 E 12450 S STE A
PO BOX 1432
DRAPER, UT 84020
EMAIL

Charles L. Kaiser, Esq.
DAVIS GRAHAM & STUBBS LLC
1550 SEVENTEENTH ST STE 500
DENVER, CO 80202-1550
EMAIL

Tod J. Smith, Esq.
WHITING & SMITH
1136 PEARL ST STE 203
BOULDER, CO 80302
EMAIL

Mr. Brian L Farr, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
160 E 300 S
PO BOX 140857
SALT LAKE CITY, UT 84114-0857
EMAIL

Jeffrey Thomas Colemere, Esq.
SMART SCHOFIELD SHORTER & LUNCEFORD
5295 S COMMERCE DR STE 200
MURRAY, UT 84107
EMAIL

Bradford D. Myler (7089)
Attorney for Plaintiff
1278 South 800 East
Orem, UT 84097
Telephone: (801) 225-6925
Facsimile: (801) 225-8417

FILED
CLERK, U.S. DISTRICT COURT

RECEIVED FEB 22 2005 A 10:08

U.S. DISTRICT COURT
BY: _____
OFFICIAL CLERK
JUDGE TARA CAMPBELL

RECEIVED CLERK

FEB 22 2005

U.S. DISTRICT COURT

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

MARK AUGUSTUS,

Plaintiff,

v.

JO ANNE BARNHART
COMMISSIONER OF THE SOCIAL
SECURITY ADMINISTRATION,

Defendant,

CIVIL ACTION NO.
04-CV-1139 TC

SCHEDULING ORDER

The Court establishes the following scheduling order:

1. The answer of the Defendant is on file.
2. Plaintiff's brief should be filed by June 21, 2005.
3. Defendant's answer brief should be filed by July 21, 2005.
4. Plaintiff may file a reply brief by August 4, 2005.

DATED this 23 day of February, 2005.

BY THE COURT:

Tara Campbell
U.S. DISTRICT COURT JUDGE

7

alt

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-01139

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Bradford D. Myler, Esq.
MYLER LAW OFFICES
1278 S 800 E
PO BOX 970039
OREM, UT 84097
EMAIL

Scott Patrick Bates, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

GRANT R. CLAYTON (Utah State Bar No. 4552)
TERRENCE J. EDWARDS (Utah State Bar No. 9166)
CLAYTON, HOWARTH & CANNON, P.C.
1225 East Fort Union Boulevard
Midvale, Utah 84047
P.O. Box 1909
Sandy, Utah 84091-1909
Telephone: (801) 255-5335
Facsimile: (801) 255-5338

RECEIVED

FEB 23 2005

Attorneys for Plaintiff, OFFICE OF
KNUCKLEHEAD MUSIC, JUDGE TENA CAMPBELL

FILED
CLERK, U.S. DISTRICT COURT
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2005 FEB 24 A 10:08
2005 FEB 22 P 6:24
DISTRICT OF UTAH
BY: DEPUTY CLERK
U.S. DISTRICT COURT
DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

KNUCKLEHEAD MUSIC, LC
a Utah Limited Liability Company,

Plaintiff,

vs.

SOUND ENHANCEMENTS, INC., a
Delaware Corporation, and JOHN DOES 1-
5, and JANE DOES 1-5,

Defendants.

**VOLUNTARY DISMISSAL
WITHOUT PREJUDICE**

Civil No.: 2:04-cv-00737

Judge: Honorable Tena Campbell

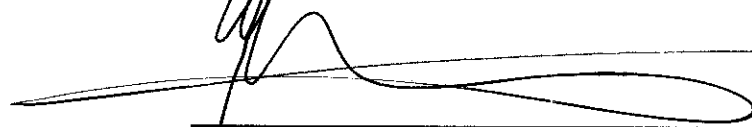
VOLUNTARY DISMISSAL WITHOUT PREJUDICE

Pursuant to DUCivR 54-1, Plaintiff, KNUCKLEHEAD MUSIC, LC, does hereby
voluntarily dismiss all claims without prejudice in the instant case against SOUND
ENHANCEMENTS, INC., JOHN DOES 1-5, and JANE DOES 1-5.

DATED this 22 day of February, 2005

Respectfully Submitted,

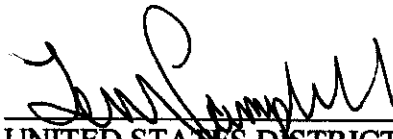

CLAYTON, HOWARTH & CANNON, PC


Grant R. Clayton
Terrence J. Edwards
CLAYTON, HOWARTH & CANNON, P.C.
P.O. Box 1909
Sandy, Utah 84091-1909
Telephone: (801) 255-5335
Attorneys for Plaintiff,
KNUCKLEHEAD MUSIC, LC

So Ordered by the COURT

DATED this 23 day of February, 2005.

BY THE COURT:


UNITED STATES DISTRICT COURT

alt

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00737

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Grant R Clayton, Esq.
CLAYTON HOWARTH & CANNON
PO BOX 1909
SANDY, UT 84091-1909
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 24 A 10:08

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

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FEB 23 2005

OFFICE OF
JUDGE TERA CAMPBELL

Jon D. Williams (8318)
8 East Broadway
Suite 500
Salt Lake City, Utah 84111
(801) 746-1460
(801) 746-5613 FAX
Attorney for Defendant

RECEIVED CLERK

FEB 22 2005

U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
CENTRAL DIVISION, DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK C. LECHEMINANT,

Defendant.

FINDINGS AND ORDER FOR POST-
CONVICTION PSYCHIATRIC
EVALUATION

Case No. 2:04-CR-0132-TC

BASED UPON the Defendant's motion, the independent observations of the United States Probation Officer assigned to this matter, good cause appearing therefore, the Court makes and enters the following Findings and Order:

1. The Defendant entered a plea of guilty to Counts I and II of the Indictment on October 8, 2004.
2. Pursuant to 18 U.S.C. § 4244(a), the Defendant shall undergo all necessary examinations to assist the Court and the parties in sentencing matters as specified

134

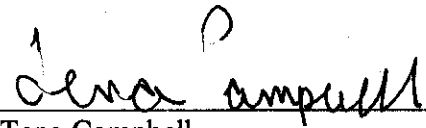
in Defendant's motion. Specifically, the report should address to the extent possible, the Defendant's susceptibility to coercion and whether it is related to his prior head traumas, as well as recommendations regarding what type of counseling the Defendant may be in need of.

3. Pursuant to 18 U.S.C. § 4244(b), the examiner(s) shall file with the Court a report in accordance with the provisions of 18 U.S.C. § 4247(b)-(c). Moreover, the investigative materials and medical documents provided by the Defendant can be released to the Bureau of Prisons.
4. In addition to the information required by 18 U.S.C. § 4247, the report shall also include an opinion by the examiner(s) concerning any sentencing alternatives that could best accord the Defendant the type of treatment he does need.
5. Pursuant to 18 U.S.C. § 4247(b), the Defendant is committed to the custody of the Attorney General of the United States, for placement in a suitable facility, for a reasonable period, not to exceed thirty (30) days, or such other period as the director of such facility shall apply, in which to complete the examination and report.

Page Three: *U.S.A. vs. LeCheminant*, Case No.: 2:04-132-TC; Order for Psychological Evaluation

DATED this 23 day of February, 2005.

BY THE COURT:



Tena Campbell
United States District Court Judge

alt

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00132

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Colleen K. Coebergh, Esq.
29 S STATE ST #007
SALT LAKE CITY, UT 84111
EMAIL

Michael S. Lee, Esq.
US ATTORNEY'S OFFICE
/
EMAIL

Jon D. Williams, Esq.
8 E BROADWAY STE 500
SALT LAKE CITY, UT 84111
EMAIL

David V. Finlayson, Esq.
43 E 400 S
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH
/
EMAIL

US Probation
DISTRICT OF UTAH
/
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

Gifford W. Price, Esq. (Bar No. 2647)
Gregory N. Jones, Esq. (Bar No. 5978)
MACKEY PRICE THOMPSON & OSTLER
350 American Plaza II
57 West 200 South
Salt Lake City, Utah 84101
Phone: (801) 575-5000

FILED FEB 24 10 03
DISTRICT OF UTAH
BY: RECEIVED CLERK
OFFICE OF DEPUTY CLERK
JUDGE TENA CAMPBELL FEB 22 2005

U.S. DISTRICT COURT

Attorneys for Defendant/Counterclaimant Maximum Human Performance, Inc.

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, GENERAL DIVISION

MONARCH NUTRITIONAL
LABORATORIES, INC., a Delaware
corporation,

Plaintiff,

v.

MAXIMUM HUMAN PERFORMANCE,
INC., a New Jersey corporation,

Defendant.

MAXIMUM HUMAN PERFORMANCE,
INC., a New Jersey Corporation,

Counter Plaintiff,

v.

MONARCH NUTRITIONAL
LABORATORIES, INC., a Delaware
corporation,

Counterclaim Defendant.

ORDER

Civil No. 2:03CV 474 TC

Judge: Tena Campbell

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Based upon the foregoing request, it is hereby ordered that Defendant/Counterclaim Plaintiff Maximum Human Performance, Inc. shall have to and including Thursday, February 24, 2005 within which to respond to Monarch Nutritional Laboratories, Inc.'s January 18, 2005 Motion For Partial Summary Judgment in this matter.

DATED this 13 day of February, 2005.

BY THE COURT:



Honorable Judge Tena Campbell

alt

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00474

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Gifford W Price, Esq.
MACKEY PRICE THOMPSON & OSTLER
57 W 200 S STE 350
SALT LAKE CITY, UT 84101-1655
JFAX 9,5755006

Ms. Peggy A Tomsic, Esq.
TOMSIC LAW FIRM LLC
136 E SO TEMPLE #800
SALT LAKE CITY, UT 84111
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 24 A 0:00

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BY: _____
DEPUTY CLERK

DISABLED RIGHTS ACTION
COMMITTEE,

Plaintiff,

vs.

LANWOOD CONSTRUCTION,

Defendant.

TRIAL ORDER

Civil No. 2:03 CV 881 TC

The final pretrial conference in this matter is scheduled for March 2, 2005, at 3:00 p.m.

This case is set for a 3-day jury trial to begin on March 30, 2005, at 8:30 a.m. The attorneys are expected to appear in chambers at 8:00 a.m. on the first day of trial for a brief pre-trial meeting.

Counsel are instructed as follows:

1. Court-Imposed Deadlines.

The deadlines described in this order cannot be modified or waived in any way by a stipulation of the parties. Any party that believes an extension of time is necessary **must** make an appropriate motion to the court.

2. Pretrial Order.

At the pretrial conference, plaintiff is to file a joint proposed pretrial order which has been approved by all counsel. The pretrial order should conform generally to the requirements of DuCivR 16-1(3) and to the approved form of pretrial order which is reproduced as Appendix IV to the Rules of Practice for the U.S. District Court for the District of Utah.

8

3. Jury Instructions

The court has adopted its own standard general jury instructions, copies of which may be obtained from the court prior to trial. The procedure for submitting proposed jury instructions is as follows:

(a) The parties must serve their proposed jury instructions on each other **at least ten business days before trial**. The parties should then confer in order to agree on a single set of instructions to the extent possible.

(b) If the parties cannot agree upon one complete set of final instructions, they may submit separately those instructions that are not agreed upon. However, it is not enough for the parties to merely agree upon the general instructions and then each submit their own set of substantive instructions. The court expects the parties to meet, confer, and agree upon the wording of the substantive instructions for the case.

(c) The joint proposed instructions (along with the proposed instructions upon which the parties have been unable to agree) must be filed with the court **at least five business days before trial**. All proposed jury instructions must be in the following format:

(i) An original and one copy of each instruction, labeled and numbered at the top center of the page to identify the party submitting the instruction (e.g., "Joint Instruction No. 1" or "Plaintiff's Instruction No. 1"), and including citation to the authority that forms the basis for it.

(ii) A 3.5" high density computer diskette containing the proposed instructions (and any proposed special verdict form), without citation to authority, formatted for the most current version of WordPerfect. Any party unable to comply with this requirement must contact the court to make alternative arrangements.

(d) Each party should file its objections, if any, to jury instructions proposed by any other party **no later than two business days before trial**. Any such objections must recite the proposed instruction in its entirety and specifically highlight the objectionable language contained therein. The objection should contain both a concise argument why the proposed language is improper and citation to relevant legal authority. Where applicable, the objecting party **must** submit, in conformity with paragraph 3(c)(i) - (ii) above, an alternative instruction covering the pertinent subject matter or principle of law. Any party

may, if it chooses, submit a brief written reply in support of its proposed instructions **on the day of trial**.

(e) All instructions should be short, concise, understandable, and neutral statements of law. Argumentative instructions are improper and will not be given.

(f) Modified versions of statutory or other form jury instructions (e.g., Devitt & Blackmar) are acceptable. A modified jury instruction must, however, identify the exact nature of the modification made to the form instruction and cite the court to authority, if any, supporting such a modification.

4. Special Verdict Form

The procedure outlined for proposed jury instructions will also apply to special verdict forms.

5. Requests for Voir Dire Examination of the Venire.

The parties may request that, in addition to its usual questions, the court ask additional specific questions to the jury panel. Any such request should be submitted in writing to the court and served upon opposing counsel **at least ten business days before trial**.

6. Findings of Fact and Conclusions of Law

At the conclusion of all non-jury trials, counsel for each party will be instructed to file with the court proposed findings of fact and conclusions of law. The date of submission will vary, depending upon the need for and availability of a transcript of trial and the schedule of court and counsel. Findings of fact should be supported, if possible, by reference to the record. For that reason, the parties are urged to make arrangements with Mr. Raymond Fenlon, the Court Reporter, for the preparation of a trial transcript. Conclusions of law must be accompanied by citations to supporting legal authority.

As with proposed jury instructions and special verdict forms, the proposed findings of fact and conclusions of law should be submitted to chambers both in hard copy and on a 3.5" high density computer diskette formatted for WordPerfect 6.1.

7. Motions in Limine

All motions in limine are to be filed with the court at **at least five business days before trial**, unless otherwise ordered by the court.

8. Exhibit Lists/Marking Exhibits

All parties are required to prepare an exhibit list for the court's use at trial. The list contained in the pretrial order will not be sufficient; a separate list must be prepared. Plaintiffs should list their exhibits by number; defendants should list their exhibits by letter. Standard forms for exhibit lists are available at the clerk's office, and questions regarding the preparation of these lists may be directed to the courtroom deputy, Theresa Brown, at 524-6602. All parties are required to pre-mark their exhibits to avoid taking up court time during trial for such purposes.

9. In Case of Settlement

Pursuant to DUCivR 41-1, the court will tax all jury costs incurred as a result of the parties' failure to give the court adequate notice of settlement. Leaving a message on an answering machine or sending a notice by fax is not considered sufficient notice to the court. If the case is settled, counsel must advise the jury administrator or a member of the court's staff by means of a personal visit or by person-to-person telephonic communication.

10. Courtroom Conduct

In addition to the rules outlined in DUCivR 43-1, the court has established the following ground rules for the conduct of counsel at trial:

(a) Please be on time for each court session. In most cases, trial will be conducted from 8:45 a.m. until 1:45 p.m., with two short (fifteen minute) breaks. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have an associate handle them for you.

(b) Stand as court is opened, recessed or adjourned.

(c) Stand when the jury enters or retires from the courtroom.

(d) Stand when addressing, or being addressed by, the court.

(e) In making objections, counsel should state only the legal grounds for the objection and should withhold all further comment or argument unless elaboration is requested by the court. For example, the following objections would be proper: "Objection . . . hearsay." or "Objection . . . foundation." The following objection would be improper unless the court had requested further argument: "Objection, there has been no foundation laid for the expert's opinion

and this testimony is inherently unreliable.”

(f) Sidebar conferences will not be allowed except in **extraordinary** circumstances. If a sidebar conference is held, the court will, if possible, inform the jury of the substance of the sidebar argument. Most matters requiring argument should be raised during recess.

(g) Counsel need not ask permission to approach a witness in order to **briefly** hand the witness a document or exhibit.

(h) Do not greet or introduce yourself to witnesses. For example, “Good Morning, Mr. Witness. I represent the plaintiff in this case” is improper. Begin your examination without preliminaries.

(i) Address all remarks to the court, not to opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses. Counsel shall instruct all persons at counsel table that gestures, facial expressions, audible comments, or any other manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

(j) Refer to all persons, including witnesses, other counsel, and parties, by their surnames and NOT by their first or given names.

(k) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections during direct examination shall be the attorney recognized for cross examination.

(l) Offers of, or requests for, a stipulation shall be made out of the hearing of the jury.

(m) In opening statements and in arguments to the jury, counsel shall not express personal knowledge or opinion concerning any matter in issue. The following examples would be improper: “I believe the witness was telling the truth” or “I found the testimony credible.”

(n) When not taking testimony, counsel will remain seated at counsel table throughout the trial unless it is necessary to move to see a witness. Absent an emergency, do not leave the courtroom while court is in session. If you must leave the courtroom, you do not need to ask the court's permission. Do not confer with or visit with anyone in the spectator section while court is in session.

DATED this 23 day of February, 2005.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Tena Campbell". The signature is written in a cursive style with a large initial "T" and a prominent "C".

TENA CAMPBELL
United States District Judge

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00881

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Richard F. Armknecht III, Esq.
ARMKNECHT & COWDELL
364 W 120 S
LINDON, UT 84042

Scott T. Evans, Esq.
CHRISTENSEN & JENSEN PC
50 S MAIN STE 1500
SALT LAKE CITY, UT 84144
EMAIL

STEVEN B. KILLPACK, Federal Defender (#1808)
L. CLARK DONALDSON, Assistant Federal Defender (#4822)
UTAH FEDERAL DEFENDER OFFICE
Attorneys for Defendant
46 West Broadway, Suite 110
Salt Lake City, Utah 84101
Telephone: (801) 524-4010
Facsimile: (801) 524-4060

RECEIVED
CLERK, U.S. DISTRICT COURT
FEB 24 A 3:09
OFFICE OF
JUDGE TENA CAMPBELL
DEPUTY CLERK

RECEIVED CLERK

FEB 18 2005

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

FREDERICK EUGENE GREGHUN,

Defendant.

**ORDER TO CONTINUE MOTION CUT-
OFF DATE AND TRIAL DATE**

Case No. 2:04CR 00826 TC

Based upon the motion of the Defendant, Frederick Eugene Greghun, by and through his attorney of record, L. Clark Donaldson, and the stipulation of the United States, represented by Paul G. Amann, the Court hereby continues the motion cut-off date currently set for February 18, 2005 is continued to the 31st day of March, 2005, and trial date currently set for March 28, 2005 is continued to the 1st day of June, 2005.

Dated this 22 day of Feb, 2005.

BY THE COURT:

Tena Campbell
HONORABLE TENA CAMPBELL
United States District Court Judge

12

alt

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00826

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Paul G. Amann, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
CHILDREN'S JUSTICE DIVISION
5272 COLLEGE DR STE 200
SALT LAKE CITY, UT 84123
EMAIL

Mr. L. Clark Donaldson, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

FILED RECEIVED
CLERK, U.S. DISTRICT COURT
FEB 24 9 41 AM '05
JUDGE
DEPUTY CLERK
LISA CAMPBELL

JOHN J. BORSOS Utah Bar Number 384
JOHN J. BORSOS, P. C.
Attorney for Plaintiff
115 East Social Hall Avenue
P. O. Box 112347
Salt Lake City, UT 84147-2347
(801) 533-8883 FAX (801) 533-8877

RECEIVED CLERK

FEB 17 2005

U.S. DISTRICT COURT

JOANNE ROSS,

Plaintiff,

vs.

JOANNE B. BARNHART, Commissioner,
Social Security Administration,

Defendant.

Civil No. 2:04 CV 1029 ~~JS~~

ORDER

Based upon Plaintiff's unopposed motion for enlargement of time, and for good cause shown,

IT IS HEREBY ORDERED that the filing dates for the parties' briefs be set as follows:

1. Plaintiff's Brief may be filed by March 4, 2005.
2. Defendant's Answer Brief may be filed by April 4, 2005.
3. Plaintiff may file a Reply Brief by April 18, 2005.

DATED this 23rd day of February, 2005.

BY THE COURT:

Samuel Alba
UNITED STATES MAGISTRATE

alt

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-01029

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. John J. Borsos, Esq.
PO BOX 112347
SALT LAKE CITY, UT 84147-2347
EMAIL

Scott Patrick Bates, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

RECEIVED

CLERK, U.S. DISTRICT COURT
FEB 23 2005
2005 FEB 24 A 10:08
OFFICE OF
JUDGE TENA CAMPBELL

RECEIVED CLERK

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

LUMBERMENS MUTUAL CASUALTY COMPANY

Plaintiff

v.

CLEARONE COMMUNICATIONS, INC., et al

Defendant.

*

CASE NO. 2:04CV00119 TC

*

* Appearing on behalf of:

*

*

NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA

*

(Plaintiff/Defendant)
Counter

*

MOTION AND CONSENT OF DESIGNATED ASSOCIATE LOCAL COUNSEL

I, Phillip S. Ferguson, hereby move the pro hac vice admission of petitioner to practice in this Court. I hereby agree to serve as designated local counsel for the subject case; to readily communicate with opposing counsel and the Court regarding the conduct of this case; and to accept papers when served and recognize my responsibility and full authority to act for and on behalf of the client in all case-related proceedings, including hearings, pretrial conferences, and trials, should Petitioner fail to respond to any Court order.

Date:

Feb. 22, 2005

(Signature of Local Counsel)

(Utah Bar Number)

APPLICATION FOR ADMISSION PRO HAC VICE

Petitioner, Lance A. Selfridge, hereby requests permission to appear pro hac vice in the subject case. Petitioner states under penalty of perjury that he/she is a member in good standing of the bar of the highest court of a state or the District of Columbia; is (i) ☒ a non-resident of the State of Utah or, (ii) ☐ a new resident who has applied for admission to the Utah State Bar and will take the bar examination at the next scheduled date; and, under DUCivR 83-1.1(d), has associated local counsel in this case. Petitioner's address, office telephone, the courts to which admitted, and the respective dates of admission are provided as required.

Petitioner designates Phillip S. Ferguson as associate local counsel.

Date:

February 17, 2005

Check here ☐ if petitioner is lead counsel.

Lance A. Selfridge
(Signature of Petitioner)

Name of Petitioner: Lance A. Selfridge

Office Telephone: (213) 250-7900

(Area Code and Main Office Number)

Business Address:

Lewis Brisbois Bisgaard & Smith LLP

(Firm/Business Name)

221 North Figueroa Street, #1200, Los Angeles, CA 90012

Street

City

State

Zip

139

BAR ADMISSION HISTORY

COURTS TO WHICH ADMITTED	LOCATION	DATE OF ADMISSION
CALIF. SUPREME COURT	Los Angeles	12-1-81
Ninth Circuit Court of Appeals	Los Angeles	1-20-82
USDC- Central District of CA	Los Angeles	12-21-81
USDC- Southern District of CA	San Diego	4-10-89
USDC- Eastern District of CA	Fresno	11-1-88
USDC- Northern District of CA	San Francisco	4-7-89
USDC- District of Massachusetts	Boston, MA	1-27-05 (pro hac vice)

(If additional space is needed, attach separate sheet.)

PRIOR PRO HAC VICE ADMISSIONS IN THIS DISTRICT

CASE TITLE	CASE NUMBER	DATE OF ADMISSION
------------	-------------	-------------------

None

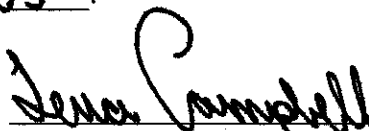
(If additional space is needed, attach a separate sheet.)

ORDER OF ADMISSION

FEE PAID

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for Petitioner's admission pro hac vice in the United States District Court, District of Utah in the subject case is GRANTED.

This 23 day of February, 2005.



U.S. District Judge

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00119

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Raymond J Etcheverry, Esq.
PARSONS BEHLE & LATIMER
201 S MAIN ST STE 1800
PO BOX 45898
SALT LAKE CITY, UT 84145-0898
EMAIL

Mr. Richard D Burbidge, Esq.
BURBIDGE & MITCHELL
215 S STATE STE 920
SALT LAKE CITY, UT 84111
EMAIL

Mr. Phillip S Ferguson, Esq.
CHRISTENSEN & JENSEN PC
50 S MAIN STE 1500
SALT LAKE CITY, UT 84144
EMAIL

Douglas R. Irvine, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
221 N FIGUEROA ST
LOS ANGELES, CA 90012-2601
EMAIL

Thomas M. Sanford, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
199 WATER ST 25TH FL
NEW YORK, NY 10038
EMAIL

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

V.

**ORDER SETTING
CONDITIONS OF RELEASE**

Daniel David Young

Case Number: 2:05CR99DS

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed

as directed. The defendant shall next appear at (if blank, to be notified)

US District Court

PLACE

350 South Main - Salt Lake City

on

5/3/05 @ 8:30 a.m.

DATE AND TIME

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- () (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

dollars (\$)

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- () (6) The defendant is placed in the custody of:
(Name of person or organization)
(Address)
(City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____
Custodian or Proxy

- () (7) The defendant shall:
- (✓)(a) maintain or actively seek employment.
 - () (b) maintain or commence an educational program.
 - (✓)(c) abide by the following restrictions on his personal associations, place of abode, or travel:
Reside at parents home in Tooele-may not move w/o prior permission of PTS; may not travel outside of Utah without prior permission of PTS
 - (✓)(d) avoid all contact with the following named persons: Any unsupervised contact w/persons under the age of 18 except for siblings.
 - (✓)(e) report on a regular basis to the supervising officer as directed.
 - () (f) comply with the following curfew:
 - (✓)(g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
 - () (h) refrain from excessive use of alcohol.
 - () (i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
 - () (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
 - () (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
 - () (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
 - () (m) execute a bail bond with solvent sureties in the amount of \$
 - () (n) return to custody each (week)day as of _____ o'clock after being released each (week)day as of _____ o'clock for employment, schooling or the following limited purpose(s):
 - () (o) surrender any passport to
 - () (p) obtain no passport
 - () (q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
 - () (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
 - () (s) submit to an electronic monitoring program as directed by the supervising officer.
 - (✓)(t) no internet access; parents are to take steps to secure computer

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

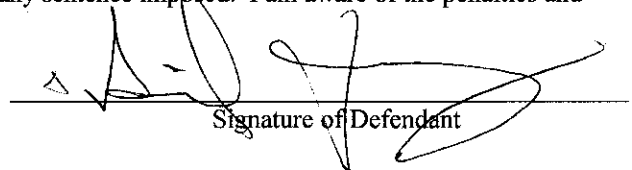
If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in additions to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.


Signature of Defendant

1075 N. Paulos Blvd.
Address

Tooele, UT 435-882-7876
City and State Telephone

Directions to the United States Marshal

- (☒) The defendant is ORDERED released after processing.
() The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: 25 July 2005


Signature of Judicial Officer

Magistrate Judge David Nuffer

Name and Title of Judicial Officer

alp

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00099

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Karin Fojtik, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Sharon L. Preston, Esq.
716 E 4500 S STE N142
SALT LAKE CITY, UT 84107
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

RECEIVED CLERK

IN THE UNITED STATES DISTRICT COURT

OCT 14 2004

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

DISTRICT OF UTAH, CENTRAL DISTRICT COURT

U.S. DISTRICT COURT

OCT 14 2005

BY MARKUS B. ZIMMER, CLERK

DEPUTY CLERK

UNITED STATES OF AMERICA, : W-04-217-M

Plaintiff, :

vs. :

ABRAHAM A. LOPEZ, :

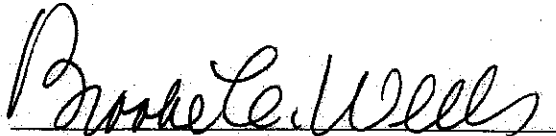
ORDER GRANTING LEAVE OF COURT TO FILE A DISMISSAL OF THE COMPLAINT.

Defendant.

Based upon the motion of the United States of America, and for good cause appearing, the Court hereby grants leave under Fed.R.Crim.P. 48(a) to allow the United States Attorney to file a dismissal with prejudice for the above referenced Complaint against the defendant, Abraham A. Lopez.

DATED this 12 day of October, 2004.

BY THE COURT:



BROOKE C. WELLS
United States Magistrate Judge

6

alp

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-m -00217

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Richard W. Daynes, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Robert A. Lund, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

United States District Court

NORTHERN DISTRICT OF UTAH

UNITED STATES OF AMERICA

V.

**ORDER SETTING
CONDITIONS OF RELEASE**

Jaime Clark

Case Number: 1:05CR004SA

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed

as directed. The defendant shall next appear at (if blank, to be notified)

US District Court

PLACE

350 South Main SLC

on

to be determined

DATE AND TIME

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- () (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

dollars (\$)

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- ☐ (6) The defendant is placed in the custody of:
(Name of person or organization)
(Address)
(City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____
Custodian or Proxy

- ☐ (7) The defendant shall:
- ☒ (a) maintain or actively seek employment.
 - ☐ (b) maintain or commence an educational program.
 - ☒ (c) abide by the following restrictions on his personal associations, place of abode, or travel:
Maintain residence; may not move w/o prior permission of PTS; May not travel outside of Utah w/o prior permission of PTS
 - ☐ (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:
 - ☒ (e) report on a regular basis to the supervising officer as directed.
 - ☐ (f) comply with the following curfew:
 - ☒ (g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
 - ☒ (h) refrain from use of alcohol.
 - ☒ (i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
 - ☐ (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
 - ☐ (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
 - ☐ (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
 - ☐ (m) execute a bail bond with solvent sureties in the amount of \$
 - ☐ (n) return to custody each (week)day as of _____ o'clock after being released each (week)day as of _____ o'clock for employment, schooling or the following limited purpose(s):
 - ☐ (o) surrender any passport to
 - ☐ (p) obtain no passport
 - ☒ (q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
 - ☐ (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
 - ☐ (s) submit to an electronic monitoring program as directed by the supervising officer.
 - ☐ (t)

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

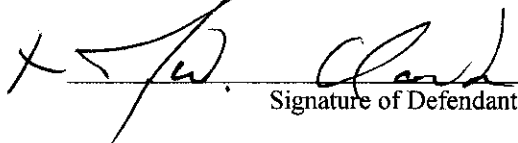
If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in additions to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.


Signature of Defendant

1304 S. 1025 W.
Address

Syracuse UT 84075 # 801-776-5253
City and State Telephone

Directions to the United States Marshal

- (☒) The defendant is ORDERED released after processing.
() The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: 2/25/05


Signature of Judicial Officer

Magistrate Judge David Nuffer

Name and Title of Judicial Officer

alp

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:05-cr-00004

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Summer M. Browning, Esq.
OGDEN AIR LOGISTICS CENTER/JUDGE ADVOCATE
6026 CEDAR LN
HILL AIR FORCE BASE, UT 84056-5812

Benjamin C. McMurray, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

/
EMAIL

US Probation
DISTRICT OF UTAH

/
EMAIL

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION**

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

PRUM TY

Defendant(s).

Case No. 2:02CR659DKW

ORDER APPOINTING COUNSEL

The defendant, **PRUM TY** requested the appointment of counsel on 2/25/05, and at that time the court determined the defendant qualified for the appointment of counsel under 18 USC § 3006A.

Therefore,

IT IS HEREBY ORDERED the Federal Public Defender, for the District of Utah, is appointed to represent the above named defendant in this matter.

DATED this 25th day of February, 2005.

BY THE COURT:



David Nuffer
United States Magistrate Judge

26

alp

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cr-00659

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

Audrey K. James, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

Jonathan D. Yeates, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

United States District Court

Central Division for the District of Utah

FILED
CLERK, U.S. DISTRICT COURT

DEPT. OF JUSTICE
DISTRICT OF UTAH

DEPUTY CLERK

Allen D. Bair

JUDGMENT IN A CIVIL CASE

v.

Jo Anne B. Barnhart, Commissioner of
Social Security

Case Number: 2:04cv1036 PGC

This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that the matter is remanded to the Commissioner for further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405 (g).

February 24, 2005

Date

Markus B. Zimmer

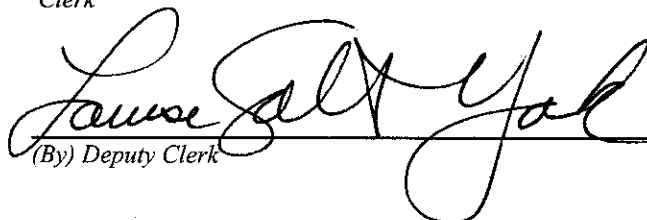
Clerk

Entered on docket

2-25-05 by:

BAH

Deputy Clerk


(By) Deputy Clerk

9

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-01036

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Bradley N. Roylance, Esq.
NEIDER & ROYLANCE
50 S MAIN #1550
SALT LAKE CITY, UT 84144
EMAIL

Scott Patrick Bates, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 25 A 9:28

FILED
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
BY CENTRAL DIVISION
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

JUAN TORRES-SIORDIA

Defendant(s),

PRETRIAL ORDER PURSUANT
TO RULE 17.1 F.R.Cr.P.

Case No. 2:05-CR-59 PGC

The above-entitled action came on for pretrial conference February 18, 2005, before Samuel Alba, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for 4/29/05, (1 days) at 8:30 am. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Paul G. Cassell by 4/27/05 along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit

9

further dissemination of the document.

3. Pretrial motions are to be filed by: 3/18/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 4/15/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: DETAINED.

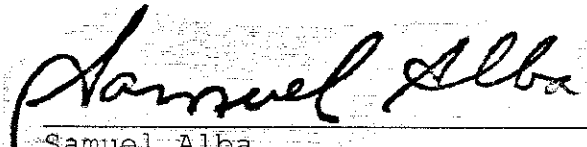
7. All exhibits will be premarked before Judge Paul G. Cassell's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes X No Language SPANISH

DATED this 18th day of February, 2005.

BY THE COURT:



Samuel Alba
Chief Magistrate Judge

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00059

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Stanley H Olsen, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Robert K. Hunt, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101

EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 24 A 10:50

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DEPUTY CLERK

DAWN M. HOLBROOK aka BRYTTANEY
TAYLOR

Plaintiff,

vs.

LEE ANN DUNFORD, a representative of
the Utah Board of Pardons and Parole

Defendant.

ORDER DENYING APPLICATION
FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2254

Case No. 2:05-CV-00047PGC

Petitioner's request for habeas relief is denied. First, the Interstate Agreement on Detainers "has no applicability to probation or parole revocation detainers."¹ Second, "before a state prisoner may raise a federal constitutional claim attacking his state conviction in a federal habeas corpus proceeding pursuant to 28 U.S.C. § 2254, he must have first exhausted state remedies and he must have provided the state with a fair opportunity to apply controlling legal

¹*McDonald v. New Mexico Parole Bd.*, 955 F.2d 631, 633 (10th Cir. 1991).

principles to facts bearing upon his constitutional claims.”² After her claims were denied by the Second Judicial District Court for the State of Utah, Petitioner did not appeal. Such an appeal is necessary to exhaustion of state remedies.³

The court therefore DENIES Petitioner’s request for habeas relief (#1-1).

DATED this 23rd day of February, 2005.

BY THE COURT:



Paul G. Cassell
United States District Judge

²*Miranda v. Cooper*, 967 F.2d 392, 397 (10th Cir. 1992) *cert. denied*, 506 U.S. 924 (1992).

³*Dulin v. Cook*, 957 F.2d 758, 759 (10th Cir. 1992).

tsh

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cv-00047

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Dawn M. Holbrook
115387
PO BOX 3
PUEBLO, CO 81002

Natalie A. Wintch, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
160 E 300 S 5TH FL
PO BOX 140812
SALT LAKE CITY, UT 84114-0812

Criminal Appeals, Esq.
CRIMINAL APPEALS
160 E 300 S SIXTH FLOOR
PO BOX 140854
SALT LAKE CITY, UT 84114-0854
JFAX 9,3660167

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 25 A 11:10

UNITED STATES OF AMERICA

Plaintiff,

Arash Alexander Zarif

Defendant

ORDER FOR PSYCHIATRIC &/OR
PSYCHOLOGICAL EXAMINATION
OR MENTAL HEALTH ASSESSMENT

Docket No. 2:05-CR-00117-001-PGC

For the purpose of assisting the Court, psychiatric and/or psychological information is necessary to obtain an assessment of the defendant's current mental status.

IT IS ORDERED that the defendant submit to a psychiatric and/or psychological evaluation or mental health assessment before a qualified practitioner, in order to provide further information to the Court.

IT IS FURTHER ORDERED that the United States Pretrial Services Agency, pursuant to 18 USC § 3154(4), (7), and (12), pay all reasonable and necessary expenses from funds allocated for such purposes.

DATED this 25 day of February 2005.

BY THE COURT:



David Nuffer
United States Magistrate Judge

11

tsh

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00117

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Karin Fojtik, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Colleen K. Coebergh, Esq.
29 S STATE ST #007
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

Jeffrey R. Oritt (Bar No. 2478)
COHNE, RAPPAPORT & SEGAL P.C.
257 East 200 South, Suite 700
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Telephone (801) 532-2666
Facsimile (801) 355-1813
Co-Counsel for Plaintiffs

David E. Comstock
COMSTOCK & BUSH
199 N. Capitol Blvd., Suite 500
P.O. Box 2774
Boise, Idaho 83701-2774
Telephone (208) 344-7700
Facsimile (208) 344-7721
Co-Counsel for Plaintiffs

FILED
CLERK, U.S. DISTRICT COURT

2003 FEB 25 PM 1:51

RECEIVED

CLERK OF DISTRICT COURT

JUDGES COPY

IN THE UNITED STATES DISTRICT COURT,
IN AND FOR THE STATE OF UTAH, CENTRAL DIVISION

DEBORAH STEED and PAUL STEED,
husband and wife,

Plaintiffs,

v.

WAL-MART STORES, INC.,

Defendant.

**SECOND AMENDED SCHEDULING
ORDER**

Case No. 2:03CV00814 DB

Judge Dee Benson

The Court, having received and reviewed the parties' Joint Motion to Amend Scheduling Orders, having reviewed the court file in this matter, being fully advised in the premises herein, and good cause appearing therefore;

IT IS HEREBY ORDERED that the original November 26, 2003 Scheduling Order, and

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the August 2, 2004 Amended Scheduling Order, entered earlier in this matter by Magistrate Judge Nuffer, are amended as follows:

1. The five day jury trial in this matter will commence on Tuesday, October 11, 2005, at 8:30 a.m., and shall continue through Monday, October 17, 2005;
2. The final Pre-Trial Conference will be held before the Court on Tuesday, September 27, 2005 at 2:30 p.m.;
3. The parties will have a settlement conference¹ on or before September 13, 2005;
4. The parties will have a Special Attorneys Conference² on or before September 13, 2005;
5. Rule 26(a)(3) Pre-Trial Disclosures:
 - a. Defendant - August 30, 2005; and
 - b. Plaintiffs - August 16, 2005.
6. The deadline for all discovery, fact and expert, is extended to August 15, 2005;
7. The deadline for a Rule 26(a)(2) disclosure and report from Plaintiffs' rebuttal psychiatrist expert (if any) is extended to sixty (60) days after receipt of a Rule 26(a)(2) disclosure and report from Defendant's psychiatrist expert; and
8. The deadline for a Rule 26(a)(2) disclosure and report from Defendant's psychiatrist expert is extended to sixty (60) days after the Court's ruling on the parties' pending

¹ As defined at footnote 5 of Magistrate Nuffer's original Scheduling Order.

² As defined at footnote 4 of Magistrate Nuffer's original Scheduling Order.

Rule 35 examination motions.

DATED this 25th day of February, 2005.

BY THE COURT



Honorable Dee Benson
United States District Court Judge

APPROVED AS TO FORM:



~~MORGAN MINNOCK~~, RICE & JAMES

Mitchel Rice
Attorneys for Defendant

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00814

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Jeffrey R Oritt, Esq.
COHNE RAPPAPORT & SEGAL
PO BOX 11008
SALT LAKE CITY, UT 84147-0008
EMAIL

David E. Comstock, Esq.
COMSTOCK & BUSH
199 N CAPITOL BLVD STE 500
BOISE, ID 83702

Mitchel T. Rice, Esq.
MORGAN MINNOCK RICE & JAMES
136 S MAIN STE 800
SALT LAKE CITY, UT 84101
JFAX 9,5319732

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

FEB 17 2005

MARKUS B. ZIMMER, CLERK
BY DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

Stephen Reilly

Defendant(s),

PRETRIAL ORDER PURSUANT

TO RULE 17.1 F.R.Cr.P.

Case No. 2:05-cr-89

BCW

The above-entitled action came on for pretrial conference **February 17, 2005**, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for **April 22, 2005**, (one days) at **9:00 am**. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Wells by **April 15, 2005** along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes _____

No _____

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

5

3. Pretrial motions are to be filed by: March 18, 2005 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by April 8, 2005. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: released.

7. All exhibits will be premarked before Judge Wells's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes ☐ No ☒ Language _____

DATED this 17 day of February, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00089

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Stanley H Olsen, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Stephen P. Reilly
462 MAYO CIRCLE
TOOELE, UT 84074

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

United States District Court
District of Utah

2005 FEB 25 P 1:51

EDS - J. J. JAH

UNITED STATES OF AMERICA

VS.

Kelley Florine Smith

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: **2:04-cr-00067-001 DB**

Plaintiff Attorney: **Lana Taylor**

Defendant Attorney: **Jamie Zenger**

Atty: CJA ___ Ret ___ FPD **X**

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's USM No.: **11336-081**

Defendant's Residence Address: _____

Country _____

02/24/2005

Date of Imposition of Sentence

Defendant's Mailing Address: _____

SAME

SAME

Country _____

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☐ was found guilty on count(s)

COP **08/31/2004** Verdict _____

I-Indictment

Title & Section
21USC§841(a)(1)

Nature of Offense
Distribution of Methamphetamine

Count
Number(s)
1

Entered on docket
2/25/05 by:
KVS
Deputy Clerk

☐ The defendant has been found not guilty on count(s)

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **36 months.**

Upon release from confinement, the defendant shall be placed on supervised release for a term of **5 years.**

☐ The defendant is placed on Probation for a period of _____
The defendant shall not illegally possess a controlled substance.

Handwritten signature/initials

Defendant: Kelley Florine Smith
Case Number: 2:04-cr-00067-001 DB

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant will submit to drug/alcohol testing as directed by the probation office and pay a one time \$115.00 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation Office.
2. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
3. The defendant shall participate in a mental health treatment program under a co-payment plan as directed by the United States Probation Office.
4. The defendant shall take any mental health medications as prescribed, and shall not possess or consume alcohol.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:
No Fine Imposed

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

Defendant: Kelley Florine Smith
Case Number: 2:04-cr-00067-001 DB

- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ _____ \$ _____

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

- ☐ Restitution is payable as follows:
- ☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ other: _____

- ☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).
- ☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00 , payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

Defendant: Kelley Florine Smith
Case Number: 2:04-cr-00067-001 DB

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

RECOMMENDATION

- ☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

The Court recommends that the defendant participates and completes the 500 hour drug re-hab program.

CUSTODY/SURRENDER

- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.
- ☒ The defendant shall report to the institution designated by the Bureau of Prisons by 1:00 p.m. Institution's local time, on 3/23/2005.

DATE:

Feb. 25, 2005

Dee Benson
Dee Benson
United States District Judge

Defendant: Kelley Florine Smith
Case Number: 2:04-cr-00067-001 DB

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00067

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Colleen K. Coebergh, Esq.
29 S STATE ST #007
SALT LAKE CITY, UT 84111
EMAIL

Jamie Zenger, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH
/
EMAIL

US Probation
DISTRICT OF UTAH
/
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 25 P 1:51

U.S. DISTRICT COURT

United States District Court District of Utah

UNITED STATES OF AMERICA

vs.

Terry Paul Moore

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: 2:04-cr-00241-002 DB

Plaintiff Attorney: Kirk Lusty

Defendant Attorney: Todd A. Utzinger

Atty: CJA ☒ Ret ☐ FPD ☐

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's USM No.: 11448-081

Defendant's Residence Address: _____

None

None

Country _____

02/24/2005

Date of Imposition of Sentence

Defendant's Mailing Address: _____

SAME

SAME

Country _____

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☐ was found guilty on count(s)

COP 12/29/2004 Verdict _____

IV - Indictment

Title & Section

18USC§513(a)

Nature of Offense

Uttering or Possession Counterfeit Securities

Count

Number(s)

IV

Entered on docket

2/25/05 by: KVS

Deputy Clerk

☐ The defendant has been found not guilty on count(s)

☒ Count(s) I and III - Indictment (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of 24 months.

Upon release from confinement, the defendant shall be placed on supervised release for a term of 3 years.

☐ The defendant is placed on Probation for a period of _____
The defendant shall not illegally possess a controlled substance.

94

Defendant: Terry Paul Moore
Case Number: 2:04-cr-00241-002 DB

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant will submit to drug/alcohol testing as directed by the probation office and pay a one time \$115.00 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation Office.

2. The defendant shall participate in drug an/or alcohol aftercare treatment under a co-payment plan as directed by the United States Probation Office and shall not possess or consume alcohol during the course of treatment.

3. The defendant shall not use or possess alcohol.

4. The defendant shall refrain from association from any known gang member.

5. The defendant shall not possess a computer without the prior permission of the probation office.

6. The defendant is to inform any employer or perspective employer of his current conviction and supervision status.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:
No Fine Imposed

☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before

Defendant: Terry Paul Moore
Case Number: 2:04-cr-00241-002 DB

the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ _____ \$ _____

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

- ☐ Restitution is payable as follows:
- ☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ other:

- ☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).
- ☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☐

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

Defendant: Terry Paul Moore
Case Number: 2:04-cr-00241-002 DB

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.


RECOMMENDATION

- ☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:
-

CUSTODY/SURRENDER

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE: Feb. 25, 2005


Dee Benson
United States District Court Judge

Defendant: Terry Paul Moore
Case Number: 2:04-cr-00241-002 DB

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00241

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Kirk C. Lusty, Esq.
US POSTAL SERVICE
LAW DEPT WE AREA
9350 S 150 E #800
SANDY, UT 84070-2702
EMAIL

Vanessa M. Ramos-Smith, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

Todd A. Utzinger, Esq.
UTZINGER & PERRETTA
562 S MAIN ST 2ND FL
BOUNTIFUL, UT 84010
EMAIL

United States Marshal Service
DISTRICT OF UTAH
/
EMAIL

US Probation
DISTRICT OF UTAH
/
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KENNETH P. CHURCH,

Defendant.

BY: DEPUTY CLERK

**ORDER GRANTING EXTENSION
OF TIME TO APPEAL**

Case No. 2:04-CR-802

Judge Dee Benson

Before the Court is defendant's Motion for Extension of Time in which to Perfect Appeal. With good cause appearing, and for the reasons set forth in Defendant's motion, the Court GRANTS the defendant's motion.

DATED this 25 day of February, 2005.

Dee Benson
Dee Benson
United States District Judge

5

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00802

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Paul F Graf, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
192 E 200 N STE 200
ST GEORGE, UT 84770
EMAIL

Mr. Ronald J. Yengich, Esq.
YENGICH RICH & XAIZ
175 E 400 S STE 400
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

RECEIVED 11:56 FEB 25 P

FEB 24 2005 D.C. DIST. OF UTAH

BY: JUDGES COPY DEPUTY CLERK

Randy S. Ludlow, Utah Bar No. 2011
Attorney for Defendant
185 S. State, Street, Suite 208
Salt Lake City, Utah 84111
Phone Number: (801) 531-1300
Fax: (801) 328-0173

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DON FUGAS a/k/a LUIS CASTENADA-
DIAZ,

Defendant.

)
) **MOTION FOR EXTENSION**
) **OF TIME TO FILE PRETRIAL**
) **MOTIONS**

)
) Case No.: 2:05CR00040 DB
) Judge Dee Benson
)
)

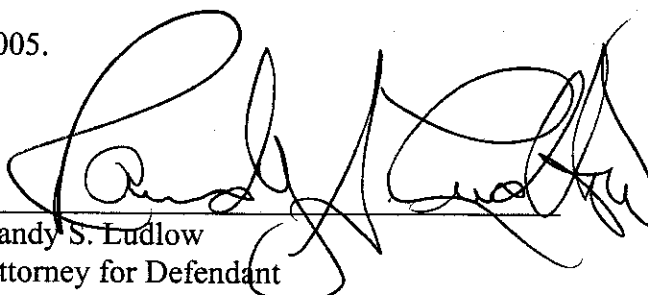
COMES NOW the defendant, Don Fugas a/k/a Luis Castenada-Diaz, by and through his attorney of record, Randy S. Ludlow, who hereby moves the Court for an extension of time in which to file pretrial motions.

This motion is based upon the fact that the discovery which has been furnished is on CD's and the same is extensive and will take numerous hours to review prior to it being able to be determined whether or not any pretrial motions exist. As such it is requested that the Court grant

12

a thirty (30) day extension for filing pretrial motions.

DATED this 9 day of February, 2005.


Randy S. Ludlow
Attorney for Defendant

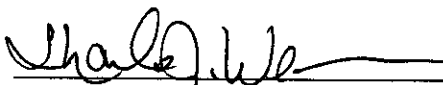
CERTIFICATE OF SERVICE


I hereby certify that on this 22nd day of February, 2005, I caused to hand delivered and faxed, a true and correct copy of the foregoing **MOTION FOR EXTENSION OF TIME TO FILE PRETRIAL MOTIONS** to the following:

Via Hand Delivery:

Veda M. Travis
Paul M. Warner
Assistant United States Attorney
185 South State Street, 4th Floor
Salt Lake City, Utah 84101

SO ORDERED


Sharla J. Weaver
Legal Assistant


DEE BENSON
United States District Judge

Date Feb. 25, 2005

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00040

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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DISTRICT OF UTAH

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K2 FEB 23 -P 1:56

SALT LAKE CITY

BY: _____
DEPUTY CLERK

Prepared and Submitted by:

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Todd M. Shaughnessy (6651)

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Attorneys for Plaintiff and Counterclaim Defendant

**IN THE UNITED STATES DISTRICT COURT IN AND FOR
THE STATE OF UTAH, NORTHERN DIVISION**

THE PROCTER & GAMBLE
DISTRIBUTING COMPANY,

Plaintiff and Counterclaim
Defendant,

vs.

TRANSWOOD, INC.,

Defendant and
Counterclaimant.

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW**

Case No. 1:01CV0053B

Honorable Dee Benson

This matter came before this Court for a bench trial on December 6, 8, 9 and 10, 2004. Plaintiff and Counterclaim Defendant The Procter & Gamble Distributing Company ("P&G") was represented by Todd M. Shaughnessy and Nathan E. Wheatley. Defendant and Counterclaimant TransWood, Inc. ("TransWood") was represented by Matthew C. Barneck. The Court, having heard and considered all evidence received at trial, and being fully advised, now makes the following Findings of Fact and Conclusions of Law:

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FINDINGS OF FACT

A. Uncontested Facts.

1. P&G is an Ohio corporation with its principal place of business in Cincinnati, Ohio. P&G transacted business with TransWood in the State of Utah at times pertinent to this lawsuit.

2. TransWood is a Nebraska corporation with its principal place of business in Omaha, Nebraska. TransWood transacted business with P&G in the State of Utah at times pertinent to this lawsuit.

3. P&G and TransWood entered into a contract for bulk motor transportation services (the "Transportation Contract") on June 24, 1998, which was retroactively effective on January 1, 1998.

4. P&G and TransWood also entered into a terminal service agreement (the "Transloading Contract") on June 24, 1998, which was retroactively effective on January 1, 1998.

5. Pursuant to the Transportation Contract, TransWood agreed to haul potato flakes in sealed tractor trailers from four locations in Idaho, where the potato flakes are manufactured (the "Idaho Suppliers"), to TransWood's facility in Ogden, Utah.

6. Pursuant to the Transloading Contract, Transwood agreed to move, or "transload," the potato flakes from its tractor trailers into dedicated railroad cars, which it then sealed and released to the railroad for delivery to P&G's facilities in Jackson, Tennessee.

7. TransWood provided these services from approximately January 1998 to August 2000. Thereafter, TransWood provided these services pursuant to an agreed upon phase-out schedule through October 2000.

8. Because the potato flakes are used in products for human consumption, P&G established a policy which required, among other things, that the bacteria levels in the potato flakes could not exceed certain specified limits.

9. The bacteria levels in the potato flakes at the time they left the control of the Idaho Suppliers were determined by drawing samples of the potato flakes from the loaded tractor trailers and subjecting them to microbiological testing.

10. After these samples were drawn, the tractor trailers were sealed and TransWood transported them to its terminal in Ogden, Utah.

11. The bacteria levels in the potato flakes at the time they left the control of TransWood were determined by drawing samples of the potato flakes from the loaded railcars and subjecting them to microbiological testing.

12. After these samples were drawn, the railcars were sealed and delivered by railroad to P&G in Jackson, Tennessee.

13. Between April 1999 and March 2000, P&G rejected six railcars and claimed they were contaminated with excessive levels of bacteria that rendered the product unfit for human consumption.

14. P&G and TransWood engaged in discussions over these shipments for a period of several months.

15. On July 12, 2000, P&G sent TransWood a notice of default.

16. On July 25, 2000, TransWood responded to P&G's notice of default.

17. On August 23, 2000, P&G sent TransWood a letter terminating the Contracts.

B. P&G's Carmack Amendment Claim.

18. Because P&G uses potato flakes in products for human consumption, the bacteria levels in the potato flakes must fall below certain specified limits; if the bacteria levels exceed these limits, the product is unfit for human consumption and cannot be used by P&G.

19. Specifically, both P&G and each of the Idaho suppliers tested the potato flakes for total plate count ("TPC"), coliforms, e. coli, and Staphylococcus aureus ("staph"). P&G's maximum limit for each of these were as follows: TPC – less than 50,000 per gram, coliforms –

less than 100 per gram, e. coli – negative (<10 per gram), and staph – negative (<100 per gram). P&G's limits were reasonable and consistent with industry standards.

20. P&G presented substantial evidence concerning the practices, procedures, and protocols for its microbiological laboratory. P&G also presented evidence concerning the knowledge, skill, and training possessed by the technicians in its laboratory who performed these tests, and the manner in which the results of these tests were tracked and reported. The Court finds that P&G's laboratory practices, procedures, and protocols were consistent with industry standards, and the results of the testing performed by its laboratory in the case of the six railcars at issue are reliable.

21. P&G also presented evidence concerning the laboratory practices, procedures, and protocols employed by the microbiological laboratories at each of the Idaho suppliers. The Court finds that these laboratory practices, procedures, and protocols were consistent with P&G's, and the results of testing performed by these laboratories in the case of the six railcars at issue are reliable.

22. Both P&G and the suppliers routinely rely on these test results to determine whether the product meets specification and whether it can safely be used in products for human consumption.

23. With respect to the testing on the six railcars at issue, TransWood's expert, William Englar, did not disagree with the results of the tests as reported by P&G's laboratory, or with the results of the tests as reported by the suppliers' laboratories.

24. P&G, TransWood, and the suppliers relied upon a testing protocol to determine the bacteria levels in the potato flakes at the time the potato flakes were placed in the care and custody of TransWood, and at the time the product left the care and custody of TransWood.

25. With respect to the six railcars at issue, four contained product manufactured by Larsen Farms ("Larsens"), located in Hamer, Idaho, one contained product manufactured by

Magic Valley Foods, located in Rupert, Idaho, and one contained product manufactured by Magic West, located in Glenns Ferry, Idaho.

26. The potato flakes were never in P&G's possession or control until they arrived at P&G's plant in Jackson, Tennessee.

1. Condition of the Potato Flakes at the Time They Were Delivered to TransWood.

27. With respect to the six railcars at issue, the potato flakes were delivered to TransWood in good condition.

28. With respect to each of the six railcars at issue, the suppliers took at least 6 samples of potato flakes from the loaded trailers, drawn from the top hatches on the trailers. These samples were split – one set was tested by the suppliers' laboratory for, among other things, TPC, coliforms, e. coli, and staph. The results of these tests were reported to P&G on a certificate of analysis ("COA"). Thus, the COA represented at least 6 separate tests of the bacteria levels in the product at the time it was delivered to TransWood. The other set of samples, referred to by the parties as the "liability samples," were retained for future testing.

29. After transloading the potato flakes into railcars, TransWood took at least 3 samples from the loaded railcars, drawn from the top hatches on the railcar. The parties referred to these samples as the "preship samples." The preship samples were marked and forwarded to P&G's microbiological laboratory for testing. P&G tested each of these samples for TPC, coliforms, e. coli, and staph. In doing so, P&G would prepare two plates for each test. Thus, P&G's "preship" testing represented at least 6 separate tests of the bacteria levels in the product at the time it was delivered to the railroad for delivery to P&G. If the results of this testing showed TPC, coliform, or e. coli levels in excess of P&G's specifications, P&G would hold the railcar for further testing upon its arrival in Jackson, Tennessee. Because staph contamination is particularly dangerous, if the results of this testing showed staph in excess of P&G's

specifications, P&G would reject the product and not conduct further testing. P&G's policy in this regard is both reasonable and consistent with industry standards.

30. When the railcar arrived in Tennessee, P&G would pull 16 samples from the railcar, representing four samples from each of the four hatches in the railcar. These samples were marked and forwarded to P&G's microbiological laboratory. P&G's microbiological laboratory would then re-test these samples for whatever bacteria was out of limits in the preship samples. Again, P&G would prepare two plates for each test. Thus, P&G's resampling process represented at least 32 separate tests of the bacteria levels in the product at the time it arrived in Tennessee.

31. If the results of the resampling showed the product was acceptable, P&G would use the potato flakes. If, on the other hand, the resampling showed the product was out of limits, P&G would then test the liability samples to confirm the condition of the product at the time it was delivered to TransWood. Again, P&G would prepare two plates for each test. Thus, P&G's testing of the liability samples represented at least 12 separate tests of the bacteria levels in the product at the time it was delivered to TransWood.

32. With respect to the six railcars at issue, the testing process outline above showed that the bacteria levels in the product were within P&G's specifications at the time the product was delivered to TransWood.

33. Specifically, each COA, representing at least 6 separate tests by the suppliers' laboratories, showed bacteria levels within P&G's specifications at the time the product was delivered to TransWood.

34. Likewise, P&G's testing of the liability samples, representing at least 12 separate tests by P&G's laboratory, showed bacteria levels within P&G's specifications at the time the product was delivered to TransWood.

35. Thus, based on the testing process outline above, the product in each railcar was tested at least 18 times and, in each and every test, the bacteria levels in the potato flakes was within P&G's specifications.

36. In addition to the foregoing, each of the suppliers conducted testing on the potato flakes during the manufacturing process, which they referred to as "in-line" testing. Although the procedures for in-line testing differed slightly among the suppliers, each of them pulled samples of the potato flakes after they had been manufactured and just before being placed in silos for storage. The suppliers took these samples approximately every 1-2 hours during production. These samples were tested by the suppliers for TPC, coliforms, e. coli, and staph.

37. A loaded railcar contains approximately 180,000 pounds of potato flakes. Based on the suppliers' testing practices, this 180,000 pounds of potato flakes would have been sampled and tested by the suppliers between 45 and 90 times.

38. Although the actual test results are not available, representatives from the suppliers testified about what each would do if any of these tests came back outside of P&G's established limits. Specifically, the suppliers would scrap any product that tested positive for staph or e. coli and some would either scrap or blend to a satisfactory level any product with excessive TPC or coliform levels.

39. Based on the foregoing, the Court finds that, with respect to the six railcars at issue, the results of the suppliers' in-line testing further show the bacteria levels were within P&G's specifications, and the product was therefore in good condition at the time it was delivered to TransWood.

40. P&G also presented circumstantial evidence tending to show that the product was in good condition at the time it was delivered to TransWood. For example,

a. The six railcars at issue represented product manufactured by three different potato flake suppliers, in three different plants, and the only thing these suppliers had in common was the fact that TransWood hauled their products;

b. P&G has been purchasing potato flakes from the Magic Valley and Magic West facilities for decades and, according to these suppliers, they have never had a shipment rejected by P&G for excessive bacteria other than the shipments at issue here.

2. Condition of the Potato Flakes at the Time They Were Delivered to P&G.

41. With respect to the six railcars at issue, the potato flakes were delivered to P&G in a damaged and unusable condition.

42. As outlined above, the testing by P&G's laboratory of the preship samples and the re-samples showed bacteria levels in excess of P&G's specifications at the time the product left TransWood's custody and control.

43. Specifically, the testing showed the following with respect to each railcar:

a. ACFX 45232 had excessive TPC levels, positive e. coli, and positive coliforms;

b. ACFX 45233 had positive staph;

c. SHPX 42852 had excessive TPC levels;

d. ACFX 42630 had positive staph;

e. ACFX 42633 had positive staph; and

f. ACFX 45341 had excessive TPC levels.

44. P&G's expert, Veldon Hix, testified that the condition of the potato flakes at the time they were delivered to P&G rendered them unfit for use in products for human consumption.

45. TransWood's expert, William Englar, agreed. He testified that P&G could not reasonably and safely use the potato flakes.

46. Both experts testified that P&G could not safely and reasonably use any part of the product contained in the entire railcar, and therefore all of the product in each railcar had to be scrapped.

3. P&G's Damages.

47. As a results of the product in each railcar being unfit for human consumption and unusable by P&G, the Court finds that P&G was damaged in the following manner, representing the cost of the product plus shipping and freight:

- a. \$77,732.49 for ACFX 45232;
- b. \$74,729.44 for ACFX 45233;
- c. \$78,629.20 for SHPX 42852;
- d. \$76,446.81 for ACFX 42630;
- e. \$78,005.25 for ACFX 42633; and
- f. \$84,440.31 for ACFX 45341.

48. With respect to each railcar, P&G sold the potato flakes for animal feed for amounts that, under the circumstances, were commercially reasonable.

49. Specifically, P&G received the following amounts for the scrapped product in each railcar:

- a. \$1,739.70 for ACFX 45232;
- b. \$1,679.10 for ACFX 45233;
- c. \$1,747.00 for SHPX 42852;
- d. \$1,816.80 for ACFX 42630;
- e. \$1,854.00 for ACFX 42633; and
- f. \$1,833.00 for ACFX 45341.

4. TransWood's Negligence.

50. TransWood failed to prove, by a preponderance of the evidence, that it was not in any way negligent in its care and handling of the potato flakes.

51. TransWood did not call any witness with first hand knowledge of the manner in which any of the shipments were handled by TransWood.

52. TransWood's expert could not offer an opinion about whether TransWood was or was not in any way negligent in its handling of the potato flake shipments at issue.

5. Exceptions to Liability.

53. TransWood failed to prove, by a preponderance of the evidence, that it qualifies for any of the recognized exceptions to liability under the Carmack Amendment.

54. TransWood did not call any witness, expert or otherwise, who testified that the inherent vice or nature of the product damaged the potato flakes.

55. TransWood also argued that the damage to the potato flakes was caused by the actions of P&G. Specifically, TransWood claims that the potato flake suppliers are agents of P&G, and they supplied product with bacteria in excess of P&G's specifications. However, as set forth above, the Court finds that the potato flakes were delivered to TransWood in good condition, and TransWood therefore cannot satisfy this exception to liability.

6. Timeliness of P&G's Claims.

56. TransWood does not dispute that P&G timely and properly notified TransWood of its claims with respect to railcars SHPX 42852, ACFX 42630, ACFX 42633, and ACFX 45341. With respect to railcars ACFX 45233 and ACFX 45232, TransWood admits that P&G faxed its claims to TransWood by at least July 10, 2000. With respect to railcar ACFX 45232, TransWood admits (and its own documents demonstrate) that it had this claim in its possession by at least March 9, 2000.

57. TransWood argues that P&G's claim with respect to railcar ACFX 45233 was untimely. However, Exhibit 107, pages TRANS 03392-03393, and Exhibit 101, page TRANS 03948, are fax transmittal sheets showing that this claim (together with the claim for ACFX 45232) was faxed to TransWood on January 19, 2000. TransWood did not call any witness to refute this or to testify that it did not receive these claims on that date.

58. P&G's claims with respect to each of the six railcars were therefore timely.

C. TransWood's Counterclaims.

1. Unpaid Invoices.

59. With respect to this claim, the Court finds that the parties have agreed that the unpaid invoices total \$10,353.19, and that P&G has agreed to offset its recovery in this matter by that amount.

2. Liquidated Damages.

60. The Transloading Contract provides that if either party terminates the contracts for convenience, then the other party not terminating is entitled to recover liquidated damages.

61. P&G did not terminate its contractual relationship with TransWood for convenience.

62. P&G terminated the contracts for cause, in accordance with the default provisions of the contracts.

63. Specifically, the Court finds that P&G terminated the contracts for cause because TransWood refused to accept liability for the potato flakes damaged while in its custody and control, and because TransWood refused to provide meaningful protection for P&G's product or comply with the parties' agreed upon requirements.

64. TransWood is therefore not entitled to recover on its claim for liquidated damages.

CONCLUSIONS OF LAW

1. P&G has established, by a preponderance of the evidence, that the potato flakes were delivered to TransWood in good condition.

2. TransWood argues that a higher standard of proof applies to goods shipped in a sealed container. Even if a higher standard applied, and even if the goods at issue here could be considered shipments in a sealed container, the Court finds that P&G has presented direct and substantial evidence that the potato flakes were in good condition at the time they were delivered to TransWood.

3. P&G has established, by a preponderance of the evidence, that the potato flakes arrived at P&G in a damaged condition.

4. P&G has established, by a preponderance of the evidence, that it has suffered damages, in the amounts set forth herein.

5. TransWood has failed to prove that it was free from negligence in its care and handling of the potato flakes.

6. TransWood also has failed to prove that the damage to the potato flakes was caused by the inherent vice or nature of the potato flakes, by the actions of P&G or P&G's authorized agent, or by any of the other recognized exceptions to liability under the Carmack Amendment.

7. TransWood is therefore liable to P&G for the cost of the potato flakes, together with all other actual costs or injury to P&G.

8. Because P&G terminated its contracts with TransWood for cause, TransWood is not entitled to recover liquidated damages, as provided in section 1(c) of the Transloading Contract. Under the terms of the parties' agreement, liquidated damage are available only if the contract is terminated for convenience, as provided in section 1(c) of the Transloading Contract.

9. Based on the parties' stipulation, TransWood is entitled to an offset of \$10,353.19 (which includes attorneys' fees and costs in the amount of \$500.00), on its counterclaim for unpaid invoices.

10. Accordingly, the Court finds and concludes that P&G is entitled to judgment against TransWood in the following amount:

a. The principal amount of \$459,313.90 (\$75,992.79 for railcar ACFX 45232, \$73,050.34 for railcar ACFX 45233, \$76,882.20 for railcar SHPX 42852, \$74,630.01 for railcar ACFX 42630, \$76,151.25 for railcar ACFX 42633, \$82,607.31 for railcar ACFX 45341);

b. Pre-judgment interest on that amount, at the statutory rate of 10% per annum, from and after the date upon which P&G first notified TransWood of its claims (January 19, 2000, for railcars ACFX 45233 and ACFX 45232, and July 10, 2000, for railcars SHPX 42852, ACFX 42630, ACFX 42633, and ACFX 45341); which amount, as of January 7, 2004, totals \$167,569.08, (with a per diem interest rate of \$20.82 on ACFX 45232, \$20.01 on ACFX 45233, \$21.05 on SHPX 42852, \$20.45 on ACFX 42630, \$20.86 on ACFX 42633, \$22.63 on ACFX 45341 from January 7, 2004, through the date of entry of judgment);

c. Less \$10,353.19, as an offset for TransWood's unpaid invoice claim; and

d. Post-judgment interest at the federal rate from and after entry of judgment in this matter until the judgment is satisfied in full.

11. P&G also is entitled to recover its costs and attorneys' fees in this matter, including interest thereon, both for its successful prosecution of its claims against TransWood, and for its successful defense against TransWood's counterclaims, including TransWood's counterclaim for breach of the implied covenant of good faith and fair dealing, which this Court dismissed as a matter of law on September 14, 2004.

12. P&G is directed to file its application for award of costs and attorneys' fees no later than March 30, 2005.

13. Upon resolution of the issue of costs and attorneys' fees, the Clerk of the Court is directed to enter Judgment in favor of P&G and against TransWood consistent with the foregoing.

DATED this 25th day of Feb., 2005.

BY THE COURT:

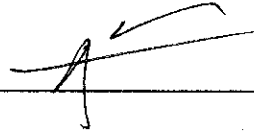


Honorable Dee V. Benson
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January, 2005, I caused to be mailed, first-class postage prepaid, a true and correct copy of the foregoing to the following:

Matthew Barneck
RICHARDS, BRANDT, MILLER & NELSON
Key Bank Tower, Seventh Floor
50 South Main Street
P.O. Box 2465
Salt Lake City, Utah 84110-2465

A handwritten signature, possibly reading "A", is written over a horizontal line.

United States District Court
for the
District of Utah
February 25, 2005

kvs

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:01-cv-00053

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Tracy Fowler, Esq.
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FILED

CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

RECEIVED CLERK

FEB 24 2005

U.S. DISTRICT COURT

BY: DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSE JESUS GONZALEZ-GARCIA,

Defendant.

Case No. 2:99 CR 190 DKW

ORDER ACCEPTING TRANSFER
OF JUDGE ASSIGNMENT

~~JUDGE STEWART~~

Based on the Motion of the United States, and good cause appearing, this Court
accepts the transfer of Case No. 2:99 CR 190 DKW.

Dated this 24th day of February 2005.

BY THE COURT:



TED STEWART
United States District Judge

34

jmr

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:99-cr-00190

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

United States Marshal Service
DISTRICT OF UTAH

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US Probation
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Dustin B. Pead, Esq.
US ATTORNEY'S OFFICE

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PAUL M. WARNER, United States Attorney
SUMMER M. BROWNING, Special Assistant U.S. Attorney
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FILED
CLERK, U.S. DISTRICT COURT
DISTRICT OF UTAH
BY: _____
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FEB 16 2005

U.S. DISTRICT COURT

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FEB 17 2005

SAMUEL ALBA
U.S. MAGISTRATE

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,	:	Docket No. 1:01-CR-83
Plaintiff	:	Magistrate Judge Alba
vs.	:	ORDER
MARCELLA JONES	:	
Defendant	:	

UPON motion of the Government and good cause appearing, IT IS HEREBY ORDERED that the above-cited case be dismissed without prejudice.

DATED this 17th day of February 2005.

BY ORDER OF THE COURT:


SAMUEL ALBA
U.S. Magistrate Court Judge

11

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:01-cr-00083

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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DISTRICT OF UTAH

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Hill Air Force Base, Utah 84056-5812
Telephone: (801) 777-7441

FILED
CLERK, U.S. DISTRICT COURT

FEB 22 2005

1005 FEB 25 P 2 00 U.S. MAGISTRATE

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

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FEB 22 2005

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,

: Docket #: 1:04-CR00036-001

Plaintiff

: Magistrate Judge Alba

vs.

ORDER

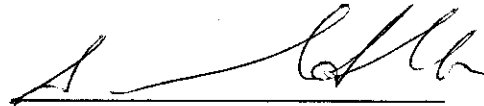
JAN HESLEY

Defendant

UPON motion of the Government and good cause appearing, IT IS HEREBY ORDERED
that the above-cited case be dismissed with prejudice.

DATED this 23rd day of February 2005.

BY ORDER OF THE COURT:


SAMUEL ALBA
U.S. Magistrate Court Judge

8

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cr-00036

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Allan S. Brock, Esq.
HILL AIR FORCE BASE
DEPT 00-ALC/JA
6026 CEDAR LN BLDG 1278
HILL AFB, UT 84056-6755
EMAIL

Summer M. Browning, Esq.
OGDEN AIR LOGISTICS CENTER/JUDGE ADVOCATE
6026 CEDAR LN
HILL AIR FORCE BASE, UT 84056-5812

United States Marshal Service
DISTRICT OF UTAH
/
EMAIL

US Probation
DISTRICT OF UTAH
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CLERK, U.S. DISTRICT COURT
JAN 13 2005
U.S. DISTRICT COURT
2005 FEB 17 P 4:05

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION
BY: DEPUTY CLERK

UNITED STATES OF AMERICA, : ORDER GRANTING LEAVE TO DISMISS
Plaintiff, : MISDEMEANOR INFORMATION
v. : Case No. 2:04-CR-760
KAY E. ANDERSON, : Magistrate Judge Brooke C.
Defendant. : Wells

Based upon the Motion of the United States of America, and for good cause appearing, the Court hereby grants the government leave to dismiss the above-captioned Misdemeanor Information, without prejudice, under Rule 48(a) of the Federal Rules of Criminal Procedure.

DATED this 17 day of February 2005.

BY THE COURT:

[Signature]
United States Magistrate

3

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00760

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Stanley H Olsen, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

**United States District Court
for the District of Utah**

Petition and Order for Warrant for Offender Under Supervision

Name of Offender: **JAVIER FLORES-PEREZ**Docket Number: **2:05-CR-102-001-TS**Name of Sentencing Judicial Officer: **Honorable C. Leroy Hansen, U.S. District Judge**

*Jurisdiction transferred from the District of New Mexico to the
District of Utah, February 17, 2005, assigned to the Honorable Ted
Stewart, U.S. District Judge.*

Date of Original Sentence: **January 29, 2002**Original Offense: **Re-Entry of Deported Alien**Original Sentence: **Commitment to Bureau of Prisons 30 months, 24 months supervised release**Type of Supervision: **Supervised Release** Supervision Began: **June 13, 2003**

PETITIONING THE COURT

☒ To issue a warrant to be placed as a detainer
tolling the supervision term as of November 27, 2004.

In custody: District of Utah

CAUSE

The probation officer believes that the offender has violated the conditions of supervision as follows:

Allegation No. 1: The defendant illegally re-entered the United States and was found in Utah County, Utah, on or about November 27, 2004. No information has been received to indicate that the defendant had legal permission to enter the country.

Allegation No. 2: On or about November 27, 2004, in Utah County, Utah, the defendant was intoxicated while in public, and was subsequently charged with such on said date.

I declare under penalty of perjury that the forgoing is true and correct

by


 Maria EA Sanchez, U.S. Probation Officer

Date: February 24, 2005

THE COURT ORDERS:

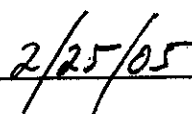
☒ The issuance of a warrant to be placed as a
detainer tolling the supervision term as of
November 27, 2004.

☐ No action

☐ Other


 Honorable Ted Stewart
 United States District Judge

Date:




jmr

United States District Court
for the
District of Utah
February 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00102

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

United States Marshal Service
DISTRICT OF UTAH

/
EMAIL

US Probation
DISTRICT OF UTAH

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